

No. 11437

United States
Circuit Court of Appeals

For the Ninth Circuit.

GRIFFITHS AND SPRAGUE STEVEDORING
COMPANY, INCORPORATED, a corpora-
tion,

Appellant,

vs.

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST, a corporation,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 299 to 618

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

NOV 27 1946

Rotary Colorprint, 661 Howard Street, San Francisco

PAUL P. O'BRIEN,
CLERK

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The Court: 31 admitted.

(Document previously marked Plaintiff's Exhibit No. 31 for identification was received in evidence.)

Mr. Dobrin: I would like to have your Honor view that.

(Court does so.)

Mr. Dobrin: I offer in evidence the third and fourth paragraphs of the answer to Interrogatory No. 2 reading as follows: "Defendant further reported to the plaintiff, in writing, on or about January 25, 1944, all tonnage handled by it for the United States Army for the calendar year 1943 in the amount of 1,389,161 tons, being the same amount shown in the answer to Interrogatory No. 1 above. This report was accompanied by a tender of the sum of \$17,364.51, as a full voluntary payment of the so-called tonnage tax for the calendar year 1943.

"Defendant has at no time prior hereto reported the amount of any tonnage handled by it for the United States Army after December 31, 1943, nor has any amount been paid on any such tonnage handled after December 31, 1943."

The Court: Admitted in evidence.

Mr. Dobrin: I offer in evidence Interrogatory No. 6 submitted by plaintiff to defendant and the defendant's answer thereto reading as follows: "Interrogatory No. 6. Did the plaintiff prior to institution of this action perform any of its purposes and objects as set forth in Paragraph 2 of

the Complaint in which you participated or in which you enjoyed the benefits?" To [45] which the defendant's answer was: "Yes."

The Court: Admitted in evidence.

Mr. Dobrin: I offer in evidence Interrogatory No. 7 submitted by Plaintiff to defendant and defendant's answer thereto, Interrogatory No. 7 reading as follows: "Has the plaintiff since the institution of this action performed any of its purposes and objects as set forth in Paragraph 2 of the Complaint in which you have or now are participating or enjoying the benefits?" To which the defendant answered "Yes."

The Court: Admitted in evidence.

Mr. Dobrin: I offer Interrogatory No. 8 and defendant's answer thereto, Interrogatory No. 8 reading as follows: "If your answer to Interrogatory No. 6 is in the affirmative, state the nature and extent of the performance of said purposes and objects together with the nature and extent of your participation therein and enjoyment of the benefits thereof and for what period of time." To which the defendant answered as follows: "The plaintiff prior to the institution of this action negotiated contracts with the labor union of which the defendant's longshoremen employees are members, and the defendant at all times while such contracts were in force hired its said employees in accordance with such contracts."

The Court: Admitted in evidence.

Mr. Dobrin: I offer Interrogatory No. 9 and defendant's answer thereto, Interrogatory No. 9

reading as follows: "If your answer to Interrogatory No. 7 is in the affirmative, state the nature and extent of the performance of such purposes and objects together with the [46] nature and extent of your participation therein and enjoyment of the benefits thereof and for what period of time." To which the defendant answered: "Since the institution of this action the plaintiff has continued to negotiate labor contracts on behalf of its membership, and defendant has continued to employ long-shoremen in accordance with the terms of such contracts."

The Court: Admitted in evidence.

Mr. Dobrin: I offer Interrogatory 12-A submitted by plaintiff to defendant and defendant's answer thereto.

The Court: 12?

Mr. Dobrin: 12-A, Interrogatory 12-A reading as follows: "What office or offices has F. E. Settersten held in the defendant, and what position or positions has he held with the defendant for the years 1942, 1943 and 1944, giving the period by dates of each?"

To which the defendant answered, "President and director during entire period."

The Court: Admitted.

Mr. Dobrin: I offer plaintiff's Interrogatory 12-B submitted to defendant and defendant's answer.

The Court: 12-E?

Mr. Dobrin: 12-B.

The Court: 12-B.

Mr. Dobrin: Interrogatory 12-B reading as fol-

lows: "What office or offices has M. E. Hay held in the defendant and what position or positions has he held with the defendant for the year 1942, 1943 and 1944, giving the period by date of each?" To which the defendant answered: "E. M. Hay (not M. E. Hay) held the positions [47] of Secretary-Treasurer and Director during all of these three years."

The Court: Admitted in evidence.

Mr. Dobrin: Interrogatory 12-C submitted by plaintiff to defendant and defendant's answer thereto, Interrogatory 12-C reading as follows: "What office or offices has M. J. Weber held in the defendant and what position or positions has he held with the defendant for the years 1942, 1943 and 1944, giving the period by dates of each?" To which the defendant answered, Vice-President during the entire period."

The Court: Admitted in evidence.

Mr. Dobrin: Mark this please.

(Minutes of joint meeting of Committee of Seattle and San Francisco Representatives Regarding Assessments marked Plaintiff's Exhibit No. 32 for identification.)

Mr. Dobrin: I am not offering it at this time.

Mr. Gose: I would like to examine it.

Mr. Dobrin: Surely, but I am not offering it yet. Mark this please.

(Excerpt from Minutes of Meeting of the Board of Directors of the Waterfront Employers Association of the Pacific Coast marked Plaintiff's Exhibit 33 for identification.)

Mr. Dobrin: I am not offering it at this time.
Mark this please.

(Agreement Between District No. 1 of International Longshoremen's & Warehousemen's Union and Waterfront Employers Association of the Pacific Coast marked Plaintiff's Exhibit No. 34 for identification.) [48]

Mr. Dobrin: I am not offering it at the present time.

The Court: There will be a recess for ten minutes.

(Recess.)

Mr. Dobrin: I will call Mr. Foisie.

F. P. FOISIE

being first duly sworn, testified on behalf of Plaintiff as follows:

Direct Examination

By Mr. Dobrin:

Q. State your full name.

A. F. P. Foisie.

Q. Where do you reside?

A. Berkeley, California.

Q. Are you associated in any way with the Waterfront Employers Association of the Pacific Coast?

A. Yes, as president.

Mr. Dobrin: With the Court's and counsel's

(Testimony of F. P. Foisie.)

permission—that is a long name, and I will hereafter refer to it as the Coast Association.

Mr. Gose: Yes.

The Court: Just a minute. This is the Waterfront Employers Association of the Pacific Coast?

Mr. Dobrin: Yes. We are so much in the habit of calling it that.

The Court: All right. Call it Coast Association, the plaintiff.

Q. How long have you been the president?

A. Since January, 1939. [49]

Q. And what prior position, if any, did you hold with any organization of persons engaged in waterfront work prior to that time?

A. Coordinator for the several port associations of Southern California, San Francisco, Portland and Seattle from 1935 to 1939; and industrial relations manager of the Waterfront Employers of Seattle from 1920 to 1934.

The Court: Let me get those dates.

The Witness: Coordinator for the port associations from 1935 to 1939, and from 1920 to 1934 I was industrial relations manager for the Waterfront Employers of Seattle.

Q. What date did you give as coast coordinator?

A. 1935 to 1939, to January 1, 1939.

Q. When you became president of plaintiff?

A. Yes.

Q. Now, you referred to the Waterfront Employers of Seattle; has the name of that association been changed?

(Testimony of F. P. Foisie.)

A. It has, to the Waterfront Employers of Washington.

Q. Waterfront Employers of Washington?

A. Yes.

Q. What qualification by training did you have for the work that you have described?

Mr. Gose: What issue is this addressed to, counsel, might I inquire?

Mr. Dobrin: Well, it is addressed to the whole subject in this case. I can't point to any specific item.

Mr. Gose: I don't believe, if your Honor please, that the particular qualifications of this witness for his job are in issue here. [50]

The Court: I assume it is preliminary.

Mr. Dobrin: Wholly so.

The Court: If you have an objection, it is overruled.

A. First as a wage worker. Then through quite a substantial period of years training and specializing in economics and labor government, and then through the war in the rehabilitation of returned service men and re-employment. Then to the special job of the Waterfront Employers, beginning in 1920 and continuing ever since. Then a full year of research and travel covering all the ports of this country in person, spending a full year in specialized study under a research foundation for the betterment of industrial relationships.

Q. Now, prior to the formation of the Coast

(Testimony of F. P. Foisie.)

Association, what form of associations, if any, existed on the Pacific Coast?

A. So-called port associations, which were larger than the single port in most instances. They covered the area; but the major port in each area usually gave to the name of the association the name of that larger port. For example, Waterfront Employers of Seattle, later changed to Waterfront Employers of Washington. Waterfront Employers of Portland continues to this day; Waterfront Employers Association of San Francisco and the Waterfront Employers Association of Southern California, the latter two in the last year having been combined into the Waterfront Employers Association of California.

Q. Now, can you give us the dates of the formation of those various local associations? [51]

A. The history of the Seattle Association dates clear back to 1908; San Francisco to 1913; Portland to 1921; Southern California, 1923.

The Court: San Francisco in 1913?

The Witness: San Francisco, 1913.

The Court: And Portland what date?

The Witness: 1921.

The Court: At Southern California?

The Witness: 1923.

Q. Now, as manager of the Waterfront Employers of Seattle, now the Waterfront Employers of Washington, what were your duties?

A. I was responsible to the directors and to the members for the development of all the relation-

(Testimony of F. P. Foisie.)

ships with the longshoremen contractually by agreement, the development of accident prevention work, the setup of a central pay service and handling of grievances; the setting up of a plan of joint employee representation at that time, and in all other respects I managed the Association in its labor relations, and there was no other aspect of the Association's work; it confined itself to that.

Q. What were your duties commencing in 1935 as Coast Coordinator and for whom were you functioning?

Mr. Gose: If the Court please, I am going to object to this line of inquiry. I can't see by any stretch of the imagination what Mr. Foisie's activities or his duties in connection with a particular job have to do with the issue in this case.

Mr. Dobrin: It is wholly preliminary.

The Court: Just a minute. I will concede, [52] counsel, that I am not convinced that it is necessary. I can see no hurt——

Mr. Gose: (Interposing) Except consumption of time.

The Court: I will say I can see no hurt except consumption of time, and I will risk that.

Mr. Dobrin: Read the question.

(Question read.)

A. Beginning in 1934, with an award of the President's Board, called the National Longshoremen's Board, there was created a Coast agreement with the Longshoremen's Union. That gave rise immediately to the necessity of some coordination

(Testimony of F. P. Foisie.)

between the four port associations. Since there was no Coast Association and no thought of one at that time, it led the four port associations to agree upon coordination of their efforts without a combination. I was asked to take that work over, and left Seattle for that work, making my headquarters in San Francisco. I was paid by the several port associations proportionately to their tonnage. I carried on work as the coordinator between the ports. I met with the directors of the four port associations from time to time and did their bidding as their servant.

Q. Now, you referred to the President's Boards Award in 1934 as creating a coastwide contract. Would you explain to the Court what you mean by that?

A. That was a determination by the parties in dispute in 1934 agreeing to surrender to this Board as a Board of Arbitration the right to determine among other issues whether there should be one longshore contract uniform and [53] covering all of the four port associations on the employers' side and a single union or different union locals on the Union's side. That is one of the earlier examples on this coast of an industrywide contract, which has now become common. That labor contract, being uniform and binding equally upon all the port associations, led to this need for having common interpretation and clearance of understanding between the ports and coordination of activities.

Q. Now, following the 1934 Award that you have referred to establishing one coastwide contract with

(Testimony of F. P. Foisie.)

longshoremen, was there any committee formed in connection with that contract other than you as a coordinator?

A. There was a coast committee with representatives from the several port associations, which in time, particularly, in the 1936 and 1937 strike, met in San Francisco with representatives of the several port associations for determination of a common program and common policy.

Q. Now, when was the plaintiff Association formed?

A. At a meeting in June, 1937, lasting the better part of a week, at which representatives were present from the several port association, and they left a committee to work together until the job was done. The representatives of the several port associations constituted the body that formed this Coast Association.

Q. And was it that body that prepared and adopted the Articles and By-Laws which are in evidence in this case?

A. It was. There has been, I think, a slight change or, at most, two technical changes, I think I recall, but otherwise the document is the same.

Q. Who participated in the formation? What individuals participated in the formation of this Association from Seattle?

A. Mr. Middleton, who is present now, Senator W. C. Dawson, and Mr. Joseph Weber of Griffiths and Sprague.

Q. You referred to Mr. Joseph Weber of Grif-

(Testimony of F. P. Foisie.)

fiths and Sprague. Did you know him during his lifetime?

A. Intimately, for years.

Q. When did you first become acquainted with him?

A. When I first was employed by the Association, on recommendation of President Suzzalo, I was referred,—Mr. Weber was referred to me, and he was the first man on the waterfront I met. He with Captain Jim Gibson had been authorized by the Seattle Association to employ a manger of industrial relations, and I became that person.

Q. And do you know what connection Mr. Weber had with the defendant in this case from the time you first knew him until 1941?

A. I knew that he was the head of the company for all purposes of dealing with labor and with the Association. He met as a trustee always and was exceedingly faithful.

Q. When you say as a trustee, you mean trustee of what?

A. The Seattle Association. He was president; he was a member of the Budget and Finance Committee; and I think also chairman; he was active in accident prevention work; he was one of the leaders of the waterfront throughout the period of his life that I knew him.

Q. Was he likewise one of the leaders in the creation of the Coast Association? [55]

A. From its inception at Lakeside, San Francisco, and immediately upon the incorporation of

(Testimony of F. P. Foisie.)

the organization, one of its directors from the beginning up to the time of his retirement.

Q. Now, will you describe to us the functions which the plaintiff Coast Association performs for its members?

A. Under its Articles of Incorporation, it negotiates the Coast labor contracts and controls labor policies in all associations' and members' labor contracts. Perhaps I should begin by stating that the Association is limited to the labor relations of its members.

Q. May I insert this question, are the several port associations, including the Waterfront Employers of Washington, all associate members of the Coast Association? A. They are.

Q. And have been from the beginning?

A. They have been from the beginning. In addition to negotiating the Coast labor contract, administering it, securing observance under it, the handling of disputes which arise within the terms of the contract, the holding of hearings and arbitration proceedings under it, the development of relations with the governmental departments, particularly throughout the period of the war, in connection with the Coast contract. In addition to that, the Coast Board determines the labor policy on all port labor matters for all port labor contracts, of which there are perhaps 34.

Q. I show you what has been market Plaintiff's Exhibit 34 for identification and request that you please——

(Testimony of F. P. Foisie.)

The Court: What exhibit is that? [56]

Mr. Dobrin: Plaintiff's Exhibit 34 for identification.

Q. And I wish you would explain to the Court what that is.

A. That is the agreement effective December 20, 1940, which is the agreement negotiated at that time but which had its origin in the National Longshoremen's Board original award of 1934 as it was several times amended in the intervening six years. This is the final agreement which continues at this time, which had its origin in 1934 and which went through a series of successive amendments. I was one of those who negotiated this agreement, and I am its signatory as president of the Association.

Q. Is that agreement in effect today?

A. It is, although notice of desire to amend was given by the Longshoremen's Union within the provisions provided for in the agreement effective September 30, but by an exchange of letters between the Union and our Association, it continues in effect until the National War Labor Board hands down amendments thereto; and those issues are before the National War Labor Board at the present time for decision and award.

Mr. Dobrin: I offer Plaintiff's Exhibit 34 for identification in evidence.

The Court: Did you say National Labor Relations Board?

The Witness: No, National War Labor Board. There is no issue of relationship. We are dealing

(Testimony of F. P. Foisie.)

with one union and have been dealing with that for ten years.

Mr. Dobrin: I offer 34 in evidence.

Mr. Gose: I am not going to make any formal [57] objection, but I think it is proper to observe, if the Court please, that I don't think there is anything in that that is especially material. We have already admitted in an answer to an interrogatory there is such a contract. I don't think the contents add much.

The Court: Exhibit 34 is admitted for what, if anything, it may be worth, there being no objection but an indication by counsel for defendant that he thinks its value is slight.

Mr. Dobrin: And I don't suppose it is necessary when such remarks are made for me to indicate that I don't agree with them.

The Court: No, the fact that you are offering it in evidence is advice to the Court that you think it is material.

(Exhibit 34 admitted in evidence.)

Q. Now, Mr. Foisie, you referred to other labor contracts other than the contract exemplified by Exhibit 34. Will you just tell the Court more in detail what other labor contracts the Coast Association is interested in and what it does about them.

A. The field of authority delegated to the Coast Association by the port associations in the meeting of its representatives to organize the Coast Association was all port labor relations. Because of the inter-dependence of both the members between one

(Testimony of F. P. Foisie.)

another and the members within a port on common labor problems, that is particularly necessary. It was so deemed by the members as a result of many years experience. Due to the interchangeable nature of the employment of port labor, which unlike many other industries, is not steady for the most part with one [58] employer and a definite employee, but the same port labor worker is likely to work for all the employers in the port. Now, the kinds of port labor so employed are longshoremen, who stow the great bulk of the cargo, ship clerks or checkers as they are called, and dock workers,—

The Court: Just a minute. Longshoremen, port checkers—

The Witness (Interposing): Ship clerks or checkers and dock workers,—

Mr. Dobrin: Mark this please.

(Chart of port labor agreements and parties thereto in United States Pacific Coast ports divided into four districts, was marked Plaintiff's Exhibit No. 35 for identification.)

A. (Resuming): —gear men, watchmen, walking bosses or foremen, and some miscellaneous groups of workers varying in the several ports.

Q. Mr. Foisie, I show you what has been marked Plaintiff's Exhibit 35 for identification and ask you what that is.

A. This happens to be a chart or list of port labor agreements and parties thereto in the Pacific Coast ports set up by district—

(Testimony of F. P. Foisie.)

The Court (Interposing): What exhibit is that?

The Witness: Exhibit 35.

The Court: That is for identification?

Mr. Dobrin: For identification only.

The Court: Now, Mr. Reporter, will you read his answer so far?

(Answer read.)

The Witness: I am sorry this is in a rather disreputable [59] condition (referring to Plaintiff's Exhibit 35). I just happend to have it in my pocket, and I didn't have a fresh copy, but it served to illustrate the diversity of port labor agreements and interests.

Q. Now, I notice, Mr. Foisie, that this chart has in the lower righthand corner the date March 23, 1938. Does the chart nevertheless illustrate the present condition or does it not?

A. It does with a very slight change.

The Court: That is 1938?

Mr. Dobrin: Yes.

Mr. Gose: I have no objection subject to the same observation I made as to the materiality of Exhibit 34.

The Court: Exhibit 35 is admitted for what it may be worth, counsel having different views on the matter.

(Document previously marked as Plaintiff's Exhibit No. 35 for identification was received in evidence.)

Mr. Dobrin: May it be agreed between us that

(Testimony of F. P. Foisie.)

when our photostatic copies arrive I may substitute a photostatic copy and take the original out?

Mr. Gose: Certainly.

Q. Now, Mr. Foisie, refer to Exhibit 35, and will you explain to the Court,—or, first, let me ask you this: that was a record made, a chart made for the period 1938? A. It was.

Q. And does it represent fairly a continuance of that situation down to and including the present time?

A. It does. There are slight changes,—if I had been writing this today, there would be slight corrections, but [60] they would not be significant in any particular.

Q. Now, will you please explain to the Court what functions with reference to those agreements the Coast Association has and is performing.

A. The Coast Association has been likened to labor's Union. It is in effect a Union of employers for the purpose of dealing collectively by the employers with labor collectively. It is in the effort to secure stability that both sides under those objectives make industry-wide or, as they are sometimes called, master contracts. In a smaller scale, that is true of a port labor contract where employers in a particular port, as here, make certain contracts, as for dock work with checkers and the like. It is for the purpose of developing minimum standards, a stable agreement, a cooperative relationship, and at times, where necessary, to strengthen both sides for whatever test of strength

(Testimony of F. P. Foisie.)

as and when it does. It is merely the effort on the part of the employers, largely employing the same workers, to work out the standards in the industry which will bring peace and stability. The interest of the employers arises out of the fact that the workers go from one employer to another. If they worked under different agreements, there would be unending disputes.

Q. Now, will you describe to the Court in connection with those agreements what the Coast Association does in reference to them?

A. Well, even before the Coast Association and ever since, no one port association, by its commitment to the other members of the Coast Association, has wholly offered to [61] make a change in a labor contract without consulting with the other members, just as the Union. It is the Coast Association, by delegation of power of the port associations and by the membership of the individual companies in the Coast Association, that has the final decision on all matters of labor policy, and exercises that frequently.

Q. And that applies to all agreements of all kinds made either by the Coast Association, local association or groups of members of local associations?

A. With this modification of your question, the answer would be yes; at times, where there is no common interest of the group in a particular segment of port labor, the port association has not exercised the control which it has and could; but

(Testimony of F. P. Foisie.)

believing in as much freedom as possible wherever it can be secured without injury to the larger group, it doesn't exercise it. It didn't in the beginning in the case of a foremen's union here; it has since.

Q. Does this exhibit illustrate those agreements in which the Coast Association has considered it a part of its function to supervise the agreements?

A. It does.

Q. Now, what does the Coast Association do for the purpose of making such a contract as has been offered in evidence here as Exhibit 34? What are the functions it performs? Who acts and what do you do?

A. In local agreements local committees of interested employers are either appointed by the local associations, or for the purpose of considering their proposals and for the purpose of considering union proposals, those matters are cleared [62] directly to the ports and the Coast Association.

Q. What do you mean by "cleared"?

A. It means the Seattle Committee would clear with the Portland, San Francisco local associations, the Southern California and the Coast Association. It means the comparable bodies in those ports would study the effect of any Association proposal or Union proposal, would advise with the ports and say, "We agree," or "Don't agree," or "We suggest certain changes." If there is a dispute or a difference, the Coast Association directors or eventually the membership would be the deciding voice. We hardly ever get to anything approaching that

(Testimony of F. P. Foisie.)

because, usually, in the exchange of ideas agreement is fairly quickly effected.

Q. Now does the staff of the Coast Association supervise this method of clearance you referred to?

A. We do, most meticulously. When there is an emergency matter, the teletype and telephone are used. When there is occasion for it, thorough preparation of all the facts underlying any situation is prepared. It sometimes involves a development of earnings from various waste material or working conditions; sometimes the examination of a hazard. All of the material is prepared. A committee of practical men then works it over, and then it goes to the larger group. By the time it has reached the larger group, all the formative work is done. By the time we have had the benefit of the experience of the men in the several ports, we are pretty much of a mind because the interests are common.

Q. But that work of assembling opinions and assembling information [63] from the various local associations and its members is done by the staff of the Coast Association?

A. Yes, it is done by myself and a few workers close to me.

Q. Now, do direct representatives of the Coast Association likewise participate in the actual negotiations of these local agreements with the Union?

A. The members of the Coast Association, as members of that and as members of the local asso-

(Testimony of F. P. Foisie.)

ciation, participate, yes. Sometimes the association joins. Sometimes counsel joins. Sometimes there may be a meeting on grave matters of representatives coming from a port to confer with the Coast Association directors. And always that occurs at the time of the quarterly meetings, which are fixed and regular as routine.

Q. Now, we have discussed procedure at to agreements other than the Coast longshoremen's agreement. Just describe to me how the negotiations with reference to the Coast longshore agreement are carried on and by whom.

A. When the time approaches for the consideration of changes in the Coast agreement——

Q. (Interposing) Well, I don't want you to,— I want you to explain from the beginning as to what you have done and how you do it at the present time in a general way.

A. Beginning with the last agreement?

Q. Beginning with the last agreement? No, the one following the president's Board's Award.

A. Beginning with the 1934 settlement of the strike by agreement to arbitrate, the president's National Longshoremen's Board met for several weeks in San Francisco, and then it met in each of the major ports, Portland, Seattle and [64] finally Los Angeles or San Pedro. Open hearings were held. Witnesses from the Union and from the local port associations were present and gave testimony. The staffs of the several port associations developed the factual material. I happened

(Testimony of F. P. Foisie.)

to have been serving as sort of a predecessor to myself in a Coast coordinating way. I covered all the ports except down South, and went along for the preparation of the material. The result of that arbitration was based on the facts developed by the Waterfront Employers, the individual employers and the Association's representatives in all of the ports. It resulted in the Coast agreement. In 1936 there was a strike and settlement, and at that settlement there were representatives of all the port associations present in San Francisco. After the 1936-37 agreement was signed, there were certain supplemental subjects involving a great amount of detail work.

Q. If I may interrupt, that would be the beginning of the services of the plaintiff in this case?

A. That is correct. The strike was settled February 4, 1937. The plans for the Coast Association were developed shortly thereafter. They were concluded in June. There were committees from the several ports that met not only on that but at other times to determine phases of the master agreement. From that point on, all Coast agreement changes have been considered carefully by all the port associations, and at all times when there was a major change impending, representatives were called in, stevedore and terminal men, from all the ports of the group. That was also true of all major arbitration. [65]

Q. Now, from that time on, that is, 1937, since the formation of the Coast Association, the Coast-

(Testimony of F. P. Foisie.)

wise longshore agreement has been negotiated and concluded by the Coast Association, is that correct?

A. That is correct.

Q. Now, what does that involve in the way of effort?

A. Well, more than I like to look back upon. For example, in the last hearings before the War Labor Board, with a special panel set out from Washington, we had six weeks of intense preparation, two weeks of hearings, with representatives from the several port associations present throughout the two weeks hearings and for the preliminary few days in advance. Thereafter there occurred the development of a 260-page printed brief and factual statement for the industry of the many issues involved. There has since been a trip to Washington involved in this and now a hearing before the War Labor Board is impending before the award is handed down.

Q. Mr. Foisie, there is nothing unique about this particular experience that you just had in connection with the War Labor Board?

A. There is not.

Q. I wish you would describe just generally the labor problem dealt with by the Coast Association in connection with this Coast agreement.

A. Well——

Q. You can recall many circumstances identical with that or substantially so.

A. We had representatives from the port associations for six weeks, two from each, in San Fran-

(Testimony of F. P. Foisie.)

cisco throughout January [66] and February and part of March,—the latter part of January and the early part of March, in negotiation with Union representatives from the several ports, attempting to work out more nearly uniform working and dispatching rules. Those are the rules which implement the master agreement.

Q. You are speaking about 1943?

A. 1940. In all arbitration such as in 1942 on we had representatives of the port associations present for a period during preparation, during the period of arbitration, which lasted some two or three weeks, sometimes thereafter, to clean up the chores. Any one of these agreements, based as they must be on statistical studies of factual material involved a great preparation and not always limited to the Coast staff. Many times the port managers are draw in, and sometimes some of the practical men lend their laboring oar. No labor contract is as simple as it appears in our experience.

Q. Now, referring to the Coast longshore agreement,—once you have arrived at the agreement, is that the end of service which the Coast Association performs in connection with it?

A. No. First—and we have had no change in the Coast agreement since 1920—we have had two awards——

Q. You say 1920?

A. 1940. Excuse me. But at that time we had to submit the agreement to the entire membership for ratification. Once the ratification sets in—the

(Testimony of F. P. Foisie.)

Union ratifies it also—we then have the problem of administering the Coast agreement. There is the duty of handling grievances and [67] routine matters such as the registering of men. There are all the issues which have to do during the war with the war functions of recruitment and training and feeding and housing. There are a whole series of dispute procedures which inevitably attach to an industry which covers 15,000 men in 24 ports for nearly 200 companies and 60 local unions. The matter, although essentially simple, inevitably takes on a good deal of detail and means a great many chores, not all of them centralized.

The Court: Mr. Reporter, will you read that answer.

(Answer read.)

Q. Mr. Foisie, under the Coast agreement, what provision is made for hiring halls?

A. There is a provision which requires a single hiring hall unless the Union and the employers get together in any port for branch hiring halls, in all the major ports except Tacoma and in such minor ports as the Union and the Association may desire.

Q. How many hiring halls are now maintained?

A. Even during war conditions, out of about 24 ports there are, as I recall them, about six in Washington and about fifteen on the Coast.

The Court: That is, the 15 includes Washington?

The Witness: Yes.

(Testimony of F. P. Foisie.)

The Court: Nine more than the six?

The Witness: Yes, that is correct. That is because the distribution of ports appear on a large scale——

Q. (Interposing) You mean there is a total of 15 on the Coast? [68]

A. Fifteen hiring halls under the Coast agreement; there are other hiring halls under other agreements.

Q. Six of which are in the Washington area?

A. Six, except for Tacoma, which is separate under a separate agreement.

Q. Now, what does the longshore agreement require with reference to the expense of these hiring halls?

A. A joint sharing of expense by the Union and the Association.

Q. And when you speak about the Association you are speaking about the Coast Association?

A. Yes; the Coast Association and the Union both.

Q. By the plaintiff in this case and the Union?

A. That is correct.

Q. Each bears one-half of the expense?

A. Exactly one-half.

Q. Is there such a hiring hall in Seattle?

A. There is, sir.

Q. What is the difference between the hiring hall in Seattle and the one in Tacoma?

A. Well, the Union in Tacoma, the I L A, operates the hiring hall, pays for it entirely, and merely

(Testimony of F. P. Foisie.)

agrees with the Employers on the dispatching rules that are to be set up.

Q. In other words, the Union there has elected to maintain its own hiring hall at its own expense?

A. It is a Union hiring hall as against what we commonly call a joint hiring hall.

Q. Now, in the administration of the Coast Agreement, is there a system of committees which function in its administration? [69]

A. Under the Coast agreement there is a joint local labor relations committee for each port, set up under the Coast agreement but by the local union and the local employers association obligated to administer the contract as a part of the Coast contract; and that joint labor relations committee in all ports has regular meeting dates——

Q. (Interposing) Now does that labor relations committee in these several ports manage the hiring hall?

A. It does, and handles grievances and handles matters of recruiting more men, registering men and the like; and it settles disputes. One of its largest activities—at least, one of its most difficult ones is the adjudication of disputes. If those disputes are not settled locally by joint settlement and joint signature, the facts are submitted to the Coast Joint Labor Relations Committee, consisting equally of members of the Union and the Coast Association. If we in the Coast Association can't settle it, it goes to an arbitrator.

Q. Now, will you please tell us over the period

(Testimony of F. P. Foisie.)

that this contract has been in effect what number, if any, of issues have arisen which have been disposed of by local committees without going to the Coast Committee and then to arbitration?

A. I can't say exactly. I know most disputes are settled by agreement locally. Of the disputes which have come to the Coast Committee, only a portion have been settled because by that time the conditions are pronounced, and we have had over 200 arbitrations under the Coast authority where arbitrators presided as in a sense this court presides, where counsel for the Union and the Association [70] conduct the hearings, where a court record is made, where a written award is handed down, which award becomes a part of the longshore contract.

Q. In addition to the type of arbitration provided for in the longshore agreement itself, has the administration of the Coast agreement resulted in other types of arbitration?

A. I am not sure of your question unless it refers to the war——

Q. (Interposing) That is what I am referring to.

A. War Shipping Administrator Admiral Land set up as part of the War Shipping Administration a particular war labor body devoted to the Pacific Coast cargo handling called the Pacific Coast Maritime Industry Board.

Q. And have matters been required to be submitted to that Board by the Coast Association in

(Testimony of F. P. Foisie.)

connection with the longshore agreement and other agreements?

A. Many; and the Union likewise.

Q. And when you say many, can you give us any rough estimate of the number?

A. We have met probably on the average of once a week for two and a half years; sometimes two and three times a week. Probably the average would be once a week at least. We have at all times the authority to increase wages or hours. We have had some difficult adjustments which required formal records and elaborate hearings in about perhaps 30 cases in two and a half years.

Q. Now, what does the staff of the plaintiff in this case which performs these function that you have described consist of? [71]

A. The Coast Association staff consists of myself as president; of Mr. Boyd, the Secretary-treasurer, who is here, of the Coast Association; of Mr. Robertson, an experienced research man; of two persons who serve in a statistical capacity; of counsel, not merely one man but a staff available at times employed as counsel. At times I have help secured from the ports' staff. That would describe probably the working staff.

Q. Now, you have described the staff of the Coast Association as it exists at its headquarters?

A. Yes.

Q. And those headquarters are maintained in the offices in San Francisco? A. They are.

Q. I assume, of course, in addition to what you

(Testimony of F. P. Foisie.)

have described you also have adequate stenographic help?

A. Oh, yes, all of the necessary personnel.

Q. And other clerical assistance?

A. That is right. I thought your question was directed to the work of the Coast Association in connection with the Pacific Coast Maritime Industry Board.

Q. No, I am speaking generally, and so if your answer is not as complete as you would have made it, complete it.

A. Of course, all the port associations are staffed on the Coast Association budget. Those staffs are responsible to me on policy matters; they are responsible to their trustees on administrative matters and in certain functions performed locally. Whenever there are labor disputes in any port, they are the persons, the manager and his assistants, his office assistants—they are the persons who must [72] begin to handle the disputes, develop the detail, present the records, whether it be in local hearings or to us in San Francisco to be handled through the Coast machinery.

Q. Well, is there a staff of the Coast Association located in Seattle?

A. Oh, yes.

Q. And on the payroll of the Coast Association?

A. That is correct.

Q. What does it consist of?

A. The manager, in this instance in Seattle, a vice-president of the Association, receives part of

(Testimony of F. P. Foisie.)

his salary from the Coast Association, the major part of it.

Q. You mean as vice-president of the Coast Association?

A. Exactly; the manager of the local association, his assistant, another assistant stationed in Tacoma. That is the major executive staff.

Q. And does the Coast Association maintain and pay for an office in Seattle?

A. Oh, yes. We have other activities not on the labor side in Seattle as well, accident prevention and the like.

Q. We will come to that. But for the purpose of housing the staff of the Coast Association, Seattle offices are maintained? A. Yes.

Q. Are those offices shares with the Waterfront Employers of Washington?

A. To the extent that the Waterfront Employers of Washington carry on central pay service for the members' longshoremen who work interchangeably for the employers, and to the extent that the local association renders service to its [73] members in the way of collective reporting, in withholding income, social security and other forms of activities, those activities are locally financed and locally controlled. All other services are Coast in function and Coast in cost.

Q. Does the Coast Association maintain similar offices in Portland, San Francisco and San Pedro?

A. Yes.

Q. You referred to the Pacific Coast Maritime

(Testimony of F. P. Foisie.)

Industry Board and will you tell the Court what the membership of that Board consists of, who are the members?

A. Six persons constitute the Board with certain alternates: two representatives of the public, two representatives of our Coast Association, two representatives of the District Union; all six appointed by the administrator, but the Union and ourselves nominate for the consideration of the War Shipping Administrator the persons which he has in all instances thus far named. In addition, alternates are appointed, two from the Union and two from the Employers. Mr. Middleton is an alternate who is here. In addition, in all matters concerning the International Longshoremen's Association at Tacoma, Anacortes and Port Angeles, where they are concerned, there are two alternates appointed from that union, and two International Longshoremen and Warehousemen's Union representatives drop out.

Q. Do you act as a member?

A. Yes.

Q. I think you have pretty well described that organization, but it was not directly described, and I wish you would [74] tell us what the functions of that organization are.

Mr. Gose: What is that?

Mr. Dobrin: The Pacific Coast Maritime Industry Board.

A. That is a creature of the War Shipping Ad-

(Testimony of F. P. Foisie.)

ministrator, appointed under the executive authority granted——

The Court: (Interposing) That is the War Shipping Administrator?

The Witness: War Shipping Administrator, Admiral Land.

A. (Resuming) That Board was created largely out of the movement for joint labor-management committees, but in this instance with representatives of the public appointed as well and with certain powers. Its objective was to increase efficiency in cargo handling on the Pacific Coast. It had some rather wide power. Those powers included such a factor as the right to set aside a portion or all of the labor contracts. That has been somewhat circumscribed since. It has developed more and more into a welfare board, a board for the securing of adequate housing, gasoline rationing, feeding, shelter, transportation of men to and from ports that are selected for our members—we procure longshoremen; and such related activities. It has handled at all times disputes and still does.

Q. Disputes which are not otherwise settled under the Coast longshore agreement?

A. That is correct.

Q. Was it created in the interest of the United States Government in the movement of cargoes by the War Shipping Administration [75] for the Army, the Navy and other governmental agencies?

A. Solely for them and under executive authority of the War Powers Act, I believe. In any event,

(Testimony of F. P. Foisie.)

its sole purpose was, following Pearl Harbor, to expedite the movement of cargo, and we are led to entertain the belief that it will be done away with once the war is over.

Q. In addition to the Coast Association furnishing the services of yourself and another member of the Coast Association, does the Coast Association do anything else for this Board?

A. Yes, a good many activities. First, we develop a great deal of statistical data required as to the availability of men, the demand for men. Our member companies do it. It is cleared and tabulated in behalf of the Pacific Coast Maritime Industry Board. Certain matters they are not in position to carry on. Until recently all gasoline ration certification was carried on by the Association. That has just been taken over after two and a half years. The building of shelters has largely been at the request of the Maritime Industry Board. The handling of allocation—that is, the determination of the need and supply of men, not of supply of men, but the balancing of that problem, particularly in districts like the Columbia River and Puget Sound, where you have so many ports and the shifting of ships and where there is a shortage of men, with the Army, Navy and War Shipping Administration determining what ships are hot ships and where men should go—all those vital matters are matters of daily routine and operation by the staff of the Coast Association centered [76] in the local associations.

(Testimony of F. P. Foisie.)

Q. And that information is transmitted through you to this Pacific Coast Maritime Industry Board?

A. Yes.

Q. You used the expression ships that are "hot." What does that mean?

A. Where military necessity indicates that a given ship must leave a berth at a given time to make another berth or go to sea or make some cargo, make a point of loading certain urgent cargo, whatever may be the factors which control the military position in the service of supplying both Army and Navy, and, incidentally, including lend-lease to Russia, Britain and so forth. All those factors, all those phases as far as the supply and the need of men are concerned are developed by the Association and placed in the hands of the authorities.

Q. Are you referring to the Coast Association?

A. Oh, yes.

Q. What activities does the Coast Association have in connection with such Federal agencies as the National Labor Relations Board and the War Labor Board?

A. Under the master contract for the Coast, all matters arising under that within the field of the War Labor Board, any dispute, must be handled by the Coast Association to the War Labor Board, whether it is regional or national, and any action on port labor agreements that likewise arise. We haven't had so much to do with the National Labor Relations Board because we were unionized long before the Wagner Act, but we have had some work,

(Testimony of F. P. Foisie.)

and that has been done entirely by the staff of the Coast Association, even if [77] the issues were local.

Q. What direct contacts and functions has the Coast Association performed for the Army, the Navy, the War Shipping Administration and other government agencies at their request?

A. We have nothing to do with the Army, Navy and War Shipping authorities on contractual matters with stevedores, steamship and terminal companies. Ours is a labor function and is limited to that. Within the labor function we have a great deal to do with them. We have no official connection, but we are relied upon constantly to help. For instance, with regard to the accident prevention activities of the Army Transport Service, it had its first basic data and experience out of the Accident Prevention Bureau of the Association. In the matter of information as to labor agreements and labor conditions and labor practices the Association is consulted constantly. In the matter of prevention of pilferage, we are expected by the Army and Navy and War Shipping to carry the banner in keeping that down, and they have supported us, and we have made some helpful progress in that direction. And, of course, the entire field of reporting possible disputes or actual disputes, the securing of the data as to the cost and best remedy—in that entire field the authorities rely upon the Association because we have the staff for doing it. And because these agreements are almost en-

(Testimony of F. P. Foisie.)

tirely Association agreements, obviously, the answers must come from that source. However, that is purely a cooperative arrangement; we have no contractual relationship.

Q. Now, in connection with these various functions of the [78] Coast Association to which you have made reference who pays the bills?

A. The members pay the bills——

Mr. Gose: Just a minute. Do you mean directly or indirectly? Well, I will take it up on cross examination.

Q. Does the Coast Association pay the expenses for the functions you described?

A. The Coast Association carries the entire cost with the single exception of the service of central pay and collective reporting.

Q. That brings me then to this——

The Court: (Interposing) Service of what?

The Witness: Central pay service and collective reporting. The central pay service was a development by the employers to meet the needs of the longshoremen so that the men who had money coming would not have to run around from one company office to the other. We have gone ahead for a couple of decades, and we pay them centrally so that a man goes to one place, no matter for what employer he works. That is a local function. The second——

Q. Pardon me. I was going to ask you a question in a little different form, and I think you will bring out the same answer. But to make the record

(Testimony of F. P. Foisie.)

clear, what are the functions of the local associations, of which the Waterfront Employers of Washington is one?

A. The two activities or functions as you describe them are central pay service and collective reporting. Then the detailed administration of all agreements is local, but it is at Coast expense. A local board of trustees sits [79] and works, and that board of trustees develops cooperation between the ports. They carry on the work, but the staff is paid by the Coast, and the cost of all the other activities except those two is borne out of Coast tonnage fees.

Q. All right. Now, getting back again to the function of the local associations, you spoke of collective reporting and central pay office?

A. Yes.

Q. Now, the central pay office is a function, as I understand it, Mr. Foisie, that the local association takes over for the individual employers of longshoremen?

A. That is correct.

Q. In other words, they pay the men with money furnished by the employer?

A. That is right.

Q. And what is this collective reporting that you are talking about?

A. If I weren't in a court, I would say it is a headache. Actually, it is a service rendered of a highly technical sort for all members of the Association under the several governmental requirements centering in the treasury department and relating to social security legislation; the withhold-

(Testimony of F. P. Foisie.)

ing tax; the reporting of combined earnings because, while the earnings of any one longshoreman from any one employer would not be substantial, the accumulation of those earnings becomes a valuable record; the withholding of taxes; the paying of the victory tax when that was present; the deduction of unemployment insurance; the payments by the individual longshoremen in some ports, [80] not here—I mean by employers of the premium required by law for old age benefits. All those are activities which vary some in the different port associations.

Q. I wish you would discriminate when you use the term “association”. You are now speaking solely about local associations?

A. Local associations. San Francisco is an association for all practical purposes the same as Seattle, Portland and San Pedro. The Coast Association is detached from the San Francisco local association just as much as it is detached from this in that these functions are carried on separately.

Q. Would it be fair to say that whereas each employer of a longshoreman would have to issue a check and make such reports for tax purposes under Federal and State agencies, the local association for the group of employers performs that service so that the longshoremen gets paid at a single place and does not have to go to several employers?

A. Due to the peculiar nature of employment and the interchangeable nature of employment of

(Testimony of F. P. Foisie.)

longshoremen, coupled with the fact that the members have developed cooperative relations among themselves for years in dealing with labor, certain of our functions or services are performed in this field which are not common to waterfront employers anywhere else in the country; but they are common throughout the Pacific Coast. First, the longshoreman gets all his money at one spot, an association office. He is not employed by the Association, but he gets all his earnings from the employers at one spot. Second, certain functions in reporting to the government are rendered by the [81] Association for its members. By carefully drawn and completely effective agreements, government bodies are served as well as the members are served and the longshoremen are served by having this collective effort.

Q. Now, those two things are the functions of the local association? A. Yes.

Q. And do the local associations carry on those functions at the local association's expense?

A. Entirely.

Q. How is that expense collected?

A. From the employers of longshoremen by a percentage of the payroll determined by the local association trustees.

Q. During the course of your testimony you have referred to the Accident Prevention Committee or Bureau, rather?

A. That is correct.

Q. Tell the Court what that is.

A. That is an organized accident prevention

(Testimony of F. P. Foisie.)

activity of the Coast Association which had its origin before the Coast Association in 1927, which has continued its existence ever since and which has become a part of the Coast Association expense and under control of the Coast Association itself. The Bureau has a staff of resident engineers in each of the major ports, three in Seattle, one in Portland, four in San Francisco and three in San Pedro under the direction of a Chief Safety Engineer, an assistant and likewise office staff in all ports. The budget runs \$80,000 last year, \$100,000 next year. Every effort is made by the Bureau staff through committees of employers called Accident Prevention Committees in the [82] several ports to make available to all the members in each port all the causes of accidents, remedies for accidents, to help carry on training in first aid, to develop a national program, to hold meetings. That has been going on since 1927 and it has become accepted as one of the most valuable services of the Association.

Q. You are speaking now of what association?

A. The Coast Association. I might measure the value by stating that the War Shipping Administration authorities advise that an analysis of costs on this Coast of insurance for longshoremen and harbor workers compensation premiums discloses the average is 8.6. On the East Coast, without this effort, it is 15% of the payroll. So that in that singular particular, without being able to say that the Accident Prevention Bureau is the cause of

(Testimony of F. P. Foisie.)

all of that—we know it is not but it is unquestionably accepted as a significant factor. Some of the companies even succeeded in getting a rate below 8.6.

Q. Does the service of the Accident Prevention Bureau result in any financial saving to members of the Coast Association?

A. To the extent——

Mr. Gose: (Interposing) Just a minute. If the Court please, I wish to object to this line of testimony. I think it is calculated to show some reasonable value of the benefit of these services to the plaintiff. May I inquire as to whether that is the purpose?

Mr. Dobrin: The purpose is to show what services were performed for our members, what value it has, certainly.

Mr. Gose: If it is calculated for the purpose of [83] claiming liability on the theory of quantum meruit, I shall interpose an objection to all this line of testimony.

The Court: All right. You may have an objection to all of this and an exception to the Court's overruling your objection. The witness may answer.

Mr. Dobrin: Read the question.

(Question read.)

A. Because the Association does not enter beyond the labor field into the contractual relations of its members either in making stevedore or terminal or other contracts or the buying of insurance, we can only rely upon the evidence voluntarily

(Testimony of F. P. Foisie.)

given to us by our member companies. We know our members enjoy a premium rate for their compensation insurance not much more than half what their associates on the East Coast have. The economies are marked and are accepted as standard; and as a full justification for the value of the compensation to its membership, it is recorded in our minutes throughout by voluntary expression of members.

Q. Now, in connection with the accident prevention work, what is the purpose of the Coast Association going into that field?

A. Because it is a vital phase of labor relations. It is considered to be directly related to labor relationship. Where you have safe working conditions, your men are for you. Where they are hazardous, they are against you, and they should be. The only cause, the one justifiable cause under our Coast labor contract which fully justifies the stoppage of work, and the only one in which the men have been upheld when they have exercised it—— [84]

Mr. Gose: Just a minute. While still preserving my precious objection, I would like to object from still another point, and that is all these theories are pure hearsay and conclusions on his part. The inquiry does not justify a speech. I think the witness should be directed to answer the questions on the basis of his own information and not the basis of conclusions and hearsay.

The Court: I am rather doubtful of this last answer.

(Testimony of F. P. Foisie.)

The Witness: Well, sir, I can get the contract. The labor agreement has it right in it. All I have said is there in so many words.

Q. It is in the labor contract?

A. I am not stating a judgment of my own. I will get it if you will look at it.

Mr. Gose: I wish the witness would confine himself to answering with statements of fact. Every question has been responded to with an oration of a sort.

Mr. Dobrin: Well, I don't think that is correct. It is not necessary to say those things.

The Court: I will say that it would seem to me that this last statement was the expression of a theory. The witness, however, says it is embodied in the labor contract. I will let him answer, and you have the privilege of cross examination.

The Witness: May I read the contract sir?

Mr. Dobrin: No, it will not be necessary.

Q. Finish your answer.

A. How far did I get?

(Question read.) [85]

A. (Resuming) I think I should have said if I did not say when the men have exercised it, they have been upheld. It is required that the employer must provide a safe working place, and if it is not provided, the men are to stop work. I am not sure I have made it coherent in there.

Q. I think it is now. When an issue such as that arises on the job, who comes there to dispose of it?

(Testimony of F. P. Foisie.)

A. The manager of the local association and the Chief—the Accident Prevention Engineer in charge in that area goes to the job. If the situation is risky, work stops until some adaptation is made.

Mr. Gose: Just a minute. That is the very sort of thing I objected to. The question was, “Who goes?” He answered it. Now we start to enlarge on it.

Mr. Dobrin: All right.

Q. What does he do when he gets there?

A. The Accident Prevention Engineer——

Mr. Gose: I want the witness to answer the question.

The Court: Well, I will say that Mr. Gose’s objection is well founded. The witness answers the question and then proceeds to——

Mr. Dobrin: He anticipates the next question.

The Court: He answers what he assumes will be your next question, which might not be. All right.

A. (Resuming) The Accident Engineer goes down to the job and inspects it.

Q. And what does he do, if anything, if he is not satisfied with the conditions that the particular employer may have [86] in effect there?

A. If in his judgment and as a result of his experience he finds there is a justifiable cause for complaint or knows a way of avoiding the cause of a complaint, he goes to the employer concerned—in this case the walking boss—and says, “Please change this operation in such and such a manner

(Testimony of F. P. Foisie.)

to make this foolproof." I think I may say it because I am responsible for the protection of these men though not immediately so.

The Court: Well, it is now 4:30. I will adjourn this case in a few minutes until tomorrow morning. I have a question of counsel. Having had the benefit of this day's work, what do you think of your prediction this morning of two days?

Mr. Dobrin: I haven't changed my prediction.

The Court: In other words, up to now the case has taken no longer than you expected?

Mr. Dobrin: No, and I have put in, I think, the majority of the material that the other side would want to put in.

The Court: What do you think, Mr. Gose?

Mr. Gose: Counsel has taken a little longer than I anticipated when I made my prediction, but as this is his only witness I would think that we could still get through in two days.

Mr. Dobrin: I have one witness on a couple of these exhibits in case you don't admit them.

The Court: Counsel, tomorrow evening, when, I imagine, if this case is not finished, this case will be adjourned until Tuesday morning. I am in Yakima on [87] Saturday. I have no cases now set for trial Tuesday. The matters which were set for trial have been continued. I am not inviting you to go over until Tuesday because I have a number of matters for consideration that I hope to do more than just consider; I hope to decide them.

But if you do not finish by tomorrow, the Court will be open for you Tuesday morning.

Mr. Dobrin: Mr. Long tells me we will be here Tuesday.

The Court: The Court will be open for you Tuesday morning at 10:00 o'clock. I am not inviting you to continue that long, but I wish counsel on both sides to know that I don't wish either of you to jeopardize any position of yours or any rights of your client by attempting to hurry this for the Court's assistance.

(Whereupon at 4:35 p.m., a recess herein was had to 10:00 a.m., March 23, 1945.) [88]

Seattle, Washington, March 23, 1945; 10:00 a. m.

(All parties present as before.)

The Court: Are the parties ready at this time?

Mr. Dobrin: Yes, your Honor.

The Court: All right: The witness Foisie may be recalled to the stand.

F. P. FOISIE

resumed the stand and testified further as follow:

Direct Examination (Resumed)

By Mr. Dobrin:

Q. Does the Accident Prevention Bureau perform any specific service in connection with the equipment used by longshoremen?

A. Yes, indeed.

(Testimony of F. P. Foisie.)

Q. And what is that?

A. All services arising out of experience which indicates what is safe equipment and what is unsafe and how to make unsafe equipment safe.

Q. Does the Bureau do anything relative to the use of shoes? A. Yes.

Q. What is that?

A. It aided in securing, in effecting arrangements with the shoe dealers and manufacturers to procure a highly approved type of safety shoe, and effected arrangements with the rationing authorities in cooperation with the government to provide a supply of such shoes to be made available to [89] the longshoremen and encouraged them to buy them and use them.

Q. Does the Accident Prevention Bureau carry on an education program among the longshoremen in safety matters? A. It does.

Q. And what is the nature of that program?

A. Varied. It extends from training large numbers of longshoremen in first aid to holding dinner meetings and other meetings with walking bosses for the discussion of safety problems; the setting up in most of the congregating places of longshoremen of poster service. Meetings are arranged with employers for the purpose of discussing and debating safety measures. Special consulting service is given to employers who want intensive consideration given to their respective operations. And the service is available to the governmental authorities interested in accident prevention.

(Testimony of F. P. Foisie.)

Q. You referred to a poster service. What is that?

A. What I think ordinarily is understood as display posters, changed weekly, placed upon standard bulletin boards, kept alive and current and placed at positions where large numbers of long-shoremen will see them.

Q. And what is the nature of the information transmitted by these posters?

A. Sometimes cartoons attempting to point the moral, and by humor through caricatures. Sometimes appeals to self interest in preventing accidents so that a man is able to take care of his family obligations. Sometimes these days the posters contain a patriotic appeal with art work; sometimes a slogan; the customary educational poster work. [90]

Q. Does the Coast Association furnish safety kits?

A. To its own staff. The companies do that for their own walking bosses.

Q. And has the Accident Prevention Bureau also established a code of safe practices?

A. Yes.

Q. And what is the nature of that code?

A. It is a publication given wide distribution, first adopted as a voluntary accident prevention measure by employers up and down the coast through their respective associations. It was first adopted in 1932 I think. It may have been earlier. It was not later. It has been slightly amended since. It has been republished. It is a compila-

(Testimony of F. P. Foisie.)

tion of safe practices for management and for men resulting from the experience drawn from actual accidents as to how to prevent them.

Q. In connection with the war effort, what use has been made of that safety code in the services for accident prevention by the Army, Navy, War Shipping Administration and other agencies?

A. There is close liaison between the Accident Prevention Bureau and the three governmental services mentioned. All three call upon the experience of the Association's staff and committees and, particularly, the Chief Safety Engineers in each of the areas as well as San Francisco. When a special problem arises calling for extraordinary care, for example, such as the handling of explosives, our men have been called in, and they have made careful studies and placed those before the authorities for such action as they wish to take. And they have quite frequently [91] adopted them in big or in substantial part. The training of engineers as well as enlisted men and officers of the Army and Navy has gone on at some length under the teaching and direction of our experienced safety men.

Q. You referred in your testimony yesterday to the local labor relations committee created by the Coast agreement. Who directs the activity of the local Labor Relations Committee in the Port of Seattle?

A. For the employers, the manager.

Q. And that is a member of the staff of the Coast Association?

A. He is.

(Testimony of F. P. Foisie.)

Q. And do the members of the Coast Association who serve on the Labor Relations Committee receive any compensation?

A. The members who are employers receive no compensation from the Coast Association.

Q. How often does this Labor Relations Committee meet?

A. Quite regularly; once a week, occasionally twice a week, and I think here for months past quite always twice a week.

Q. And does the staff member of the Coast Association keep the minutes of those meetings?

A. He does.

Q. And directs its activities? A. He does.

Q. And does he report the doings of the local Labor Relations Committee to the central office of the Coast Association? A. He does.

Q. And does the Coast Association follow the Labor Relations Committee meetings in each of the several ports? A. It does. [92]

Q. And what, if anything, does the staff of the Coast Association headquarters do with reference to these minutes?

A. First, it attempts to absorb the experience of all the ports; then to see that it is interchanged between the ports; then to offer advice on matters which are coming up for consideration which have not been finally disposed of. And always when there is a matter of Coast policy involved, to be certain that it conforms or that the manager is directed in the premises what to do.

(Testimony of F. P. Foisie.)

Q. Does the Labor Relations Committee in each port supervise the dispatchers in the hiring halls?

A. The Joint Labor Relations Committee does.

Q. And when you refer to the Joint Labor Relations Committee, you are referring to the full committee consisting of three employer representatives and three Union representatives?

A. Yes.

Q. In the Port of Seattle of what does the executive staff of the hiring hall consist?

A. A chief dispatcher, three assistants, a clerk, one of the dispatchers, I think, doing both duties; two janitors.

Q. And is the expense of that staff borne jointly by the Coast Association and the Union?

A. Equally, yes.

Q. Equally?

A. Yes, with the Union.

Q. Now, will you explain to the Court the process whereby men are obtained from the jointly maintained hiring hall by members of the Coast Association? [93]

A. Because there is almost no commercial cargo, the ordering of gangs is confined almost entirely to Army, Navy and War Shipping services. War Shipping embraces all of the lend-lease activities, British, Russian, Dutch and so forth. When the government services instruct their contracting stevedores what work is to be done on which jobs and where and the type of cargoes to be handled and all of the other arrangements, the contracting steve-

(Testimony of F. P. Foisie.)

dore members of the Association either report to or are telephoned by the Association's assistant to the manager, who handles the allocation of gangs. If there is to be no shortage of gangs, then the order is placed by the several services with their contractors, and is then relayed to the dispatcher. If there is to be a shortage of gangs, then the allocator settles with the three services which are to have priority, and then he notifies the contractors of the revised orders as directed by the government services. If there is to be a shift of gangs between ports, he, the Association staff man, the allocator, advises the parties at interest. Then the employer having placed his orders with the dispatcher receives the gangs as ordered and at the time and place and in the appropriate numbers.

Q. And is that entire system of dispatching and the supervision of that dispatching provided for in the Coast labor agreement and in the actions of the Labor Relations Committee?

A. Rather in the latter. It is not specifically provided in the Coast labor agreement, but it is generally provided for in the obligation and duties of the Joint Labor Relations [94] Committee as set forth in the agreement; and if there is a dispute in any case, it would go to the Coast Labor Relations Committee as provided in the agreement.

Q. Does the same system of dispatching apply in the Port of Tacoma? A. It does.

Q. Will you explain to the Court why the Port

(Testimony of F. P. Foisie.)

of Tacoma's hiring hall is different than the setup in Seattle?

A. First, because the Union, with a long history of responsible conduct, wanted it, wanted the hall other than under joint management. The hall is a Union hall, not joint, by the National Longshoremen's Board.

Q. May I interrupt just a moment? What I wanted you to clarify, if you will, is that or is it not the same union that operates in Seattle?

A. It was the same general union, when the National Longshoremen's Board made its award, but it secured a different affiliation or certification by the National Labor Relations Board in 1938,—1940 I think.

Q. And is a separate contract made with the Union with jurisdiction in Tacoma?

A. There is.

Q. And is that contract supervised and controlled by the Coast Association?

A. It is.

Q. And that contract is,—for the purpose of simplicity, that is an A F of L Union, is it not?

A. It is.

Q. And the Coast agreement is with the CIO Union? A. It is. [95]

Q. What other members are included in the A F of L agreement?

A. Anacortes and Port Angeles.

Q. And are all other ports on the Pacific Coast included in the CIO Coastwide agreement?

(Testimony of F. P. Foisie.)

A. Yes, as far as longshoremen are concerned.

Q. That is what I am referring to. What does the pool of longshoremen in ports consist of in the port of Seattle?

A. The day by day reports of employers indicate the average total available strength of about 2,000 to 2,200 men all inclusive with 84 organized gangs.

Q. And will you explain to the Court just briefly what you refer to as a gang?

A. A gang consists in this port of a hatch tender, who also runs the gang; a double winch driver; two men to sling up at ships side and six men minimum in the hold discharging; with two men added for loading. If the winches are to be driven singly, an additional winch driver is added. We regard ten men as a standard minimum ship gang and twelve for loading; thirteen for single winches. At times additional men are added under particular circumstances.

Q. Do either men or gangs work steadily for the same member of the Coast Association at all times? A. No.

Q. How do they work?

A. They work as dispatched by the Union dispatcher out of the hall on the basis of low earnings, rotationally as it were.

Q. Then is it fair to say that any individual longshoreman or gang during the course of a year would be working for every [96] member of the Coast Association who does work in any particular port?

(Testimony of F. P. Foisie.)

A. Who does ship loading in that port, yes.

Q. Now, is what you have explained about Seattle and its dispatching system, the method of dispatching men,—is that substantially the same in the other ports? A. It is.

Q. Does the Coast Association perform any function for its members in connection with legislation?

A. Yes.

Q. What function does it perform in that capacity?

A. It studies all legislative measures in the three States of Washington, Oregon and California and such proposed Federal legislation as directly affects our port labor conditions. The Association does not study general proposed labor legislation, but specifically that which is of direct and immediate interest to port labor conditions such as workmen's compensation, accident prevention and the like.

Q. And is this information obtained by the Coast Association circulated to its members?

A. Yes.

Q. And discussed by its members?

A. Yes.

Q. And then, presumably, the staff of the Association takes such action in respect thereto as the members may request? A. As they direct.

Q. Now, does the Coast Association perform any functions for its members specifically in connection with contracts with government agencies in the administration of them? [97]

A. Yes.

(Testimony of F. P. Foisie.)

Q. What does it do?

A. First, we provide the agencies, as they request, with what copies of labor agreements as they may wish. We notify the government agencies of impending or actual labor disputes. We notify them of impending changes in contracts which may add additional expense. The government agencies are frequently represented at our Labor Relations Committee meetings.

Q. I would like to go back to that a moment. At the Labor Relations Committee meetings in the several ports, including Seattle, do representatives of the Army, Navy or War Shipping Administration attend?

A. Frequently; not invariably, but almost always representatives of the Army are present; of the Navy not so often, but still frequently; of War Shipping, they are always represented through staff men of the Pacific Coast Maritime Industry Board. All three services may be said generally to be represented at such Labor Relations Committee meetings.

Q. Is that true both of those meetings in the local ports and those of the Coast Labor Relations Committee?

A. It is true of the local Labor Relations Committee; it happens less often in the Coast Labor Relations Committee meetings.

Q. Do representatives of Army, Navy or War Shipping Administration attend any of the general

(Testimony of F. P. Foisie.)

meetings either of the directors or the membership of the Coast Association?

A. Yes. It isn't routine, but it is quite frequent.

Q. What is the purpose of their attendance? [98]

A. They are vitally interested in what goes on. Their need to be informed and their desire to co-operate and at times to make proposals,—all this arises out of the fact that the contracts are master labor contracts.

Q. Does the Coast Association maintain legal counsel at its head office? A. Yes.

Q. Does it maintain legal counsel in each of the main four ports? A. It does.

Q. All at the expense of the Coast Association?

A. Yes.

Q. I call your attention to this statement appearing in Plaintiff's Exhibit 24, which is Minutes of Meeting of the Board of Trustees of Waterfront Employers of Washington of March 10, 1943 as follows "Discussion of delinquency of Messrs. Griffiths and Sprague and other members of the Association in the matter of tonnage assessments due to the Waterfront Employers Association of the Pacific Coast for work done by them for the U. S. Army and Navy."

Will you state whether or not there are presently in existence any delinquencies other than the defendant in this case?

A. There are two in out ports.

Q. In addition——

A. To Griffiths and Sprague.

(Testimony of F. P. Foisie.)

Mr. Gose: It is understood, of course, that I don't concede a delinquency in any sense, if that is counsel's interpretation.

Mr. Dobrin: It is not my interpretation. It is [99] in the exhibit.

Mr. Gose: But the inclusion of it in the exhibit or the reference is not admitted to be a delinquency by the defendant.

The Court: That is one of the things this lawsuit it about.

Mr. Gose: Exactly.

Mr. Dobrin: The only objection is my assumption. I am reading it out of the exhibit.

The Court: The assumption by one side of a certain condition does not require the other side to disclaim it during the trial of a case.

Q. When you refer to out ports, do you mean a smaller port? A. Yes.

Q. Now, I call your attention to the following paragraph appearing in Exhibit 24, "Members of the San Francisco Committee next spoke reciting negotiations and meetings held in other ports, explained the situation in San Francisco; the particular arrangement with the U. S. Army there which does not involve contracting stevedores——"

Will you please state whether or not that condition still exists? A. Yes.

Q. I don't think you heard this. Let me read it again. A. All right.

Q. I call your attention to the statement appearing in Exhibit 24 as follows: "Members of the San

(Testimony of F. P. Foisie.)

Francisco Committee next spoke reciting negotiations and meetings held in other ports, explained the situation in San Francisco; the particular arrangement with the U. S. Army [100] there which does not involve contracting stevedores"— Has there been any change in that situation since March 10, 1943?

A. The direct employment of longshoremen by the Army continues in San Francisco, and it is that to which I had reference. Since the date of that meeting the Army has contracted its work out for something more than a year and a half now. Effective April 1 the Army has contracted out its work to Mr. Pierce as part of a program of giving up the direct employment of longshoremen.

The Court: This is in San Francisco?

The Witness: Yes.

Q. This is a little out of order in the testimony, but I am not certain if you testified as to whether or not the Coast Association maintains a staff in Tacoma. A. It does.

Q. And what does that consist of?

A. It consists of a branch manager responsible to the Seattle manager and whatever clerical services may be needed to carry on the Coast work other than central pay service.

Q. And does that branch manager on the Labor Relations Committee at Tacoma perform the same service that the manager at Seattle does?

A. Yes.

Q. Could it be stated generally that with the

(Testimony of F. P. Foisie.)

exception of the fact that the hiring hall at Tacoma is not maintained at joint expense, the situation in Tacoma is identical to that in Seattle?

A. .Yes. [101]

Mr. Gose: With respect to the conduct of the hiring hall.

Mr. Dobrin: That is correct.

The Witness: Yes.

Q. I call your attention to Plaintiff's Exhibit 11 relative to the Coast Association's non-member assessment of 4c per man hour, and I wish you would explain to the Court what that is and what its purpose is and the reason for adopting it.

A. The man hour assessment for non-member companies is for the purpose of charging those who do not pay assessments otherwise into the Association for the services they receive when they get men from the dispatching hall as though they were members. There is a slight difference in such non-member service; they come after the members in the matter of the supply of men. The rate is charged on a reasonably equitable basis and was raised from 3c to 4c at the request of the stevedore members of the Association.

Q. Is the purpose of that profit or reimbursement?
A. Reimbursement.

Q. Has that man hour charge against non-members always existed from the beginning of the Association?

A. Yes; at least, when I say that, in Seattle it went back before 1934.

(Testimony of F. P. Foisie.)

Q. Well, you mean even before the Coast Association? A. Yes.

Q. And ever since the Coast Association that charge for non-members using the hiring hall has been in effect? A. In all ports. [102]

Q. How are the Coast Association's activities financed?

A. Out of an assessment of 2½ per ton loaded into or discharged from vessels.

Q. And is that what we are referring to in this case as the tonnage assessment?

A. It is.

Q. And that method of supporting the Association has been in effect from the beginning of the Association? A. It has been.

Q. Now, prior to the Coast Association being formed, can you explain to us how the activities of the several local associations were then financed?

A. Always and exclusively out of the membership, but under varying systems in the several ports.

Q. Would you describe those varying systems?

A. Beginning with Seattle, and when we say Seattle that includes the satellite ports including Tacoma, the expenses were met out of a twofold system of assessment: A tonnage assessment against the steamship companies and payroll percentage against the direct employers, the contract stevedores and terminal operators, in varying percentages.

In Portland, until the Coast Association, the

(Testimony of F. P. Foisie.)

entire expense of the waterfront employers on the Columbia River——

The Court: (Interposing) You are going a little too fast.

Mr. Dobrin: All right.

A. (Resuming) The entire expense of the waterfront employers on the Columbia River was borne by the contract stevedores on a payroll percentage basis. In San Francisco the expense [103] was borne on a tonnage basis, paid by all of the stevedores and steamship companies.

Q. Now, when you say on a tonnage basis by stevedores and steamship companies, do you mean by the members, whether they were stevedore or steamship company, who loaded or discharged cargo?

A. That is correct.

Q. And at that point may I ask this, do steamship company members of the Coast Association load and discharge cargo?

A. Yes.

Q. After the formation of the Association?

A. Oh, yes. In San Pedro the system was almost entirely one of tonnage assessment, with a very small payroll assessment for the stevedore.

Q. In addition to the tonnage assessment?

A. In addition to the tonnage assessment.

Q. Now, I think you have described how the Coast Association was formed and I now wish to ask you when the Coast Association was formed and the representatives of the several port associations were present, was the method of financing

(Testimony of F. P. Foisie.)

the Coast Association thoroughly and fully discussed? A. It was.

Q. And among those present I think you described Mr. Joseph Weber, the manager of Griffiths and Sprague, the defendant in this case?

A. Yes.

Q. Was he active in the discussions?

A. Very.

Q. And those discussions finally resulted in the adoption of [104] the tonnage assessment method presently provided by the by-laws? A. Yes.

Q. Will you state what the reason was for selecting that method of financing the Coast Association?

A. First, because there is a thorough going realization that there is only one source of revenue for shipping as it affects freight, and that is freight revenues. Whether the freight revenues bear the Association expense directly from the steamship companies or through contract stevedores and steamship companies, that is the only source. It was a form of direct taxation which would be known to all. Second, because a good part of our problem was how to explain to the steamship owner in Australia or Liverpool or London or Naples or anywhere else why there should be varying rates for doing identical services in several ports which to him were contiguous. If he knew what the cost was measured in terms of his tons of cargo, he would know his cost immediately and directly. Third, it was clearly agreed without any difference

(Testimony of F. P. Foisie.)

of opinion that a uniform assessment and a simple assessment was clearly desired. All of those factors entered into it.

Q. And the previous experience of the ports indicated the necessity of that?

A. Oh, yes.

Q. Explain that if you will, please.

A. Almost all of them were companies with headquarters at some one point such as San Francisco or Seattle,—in a few cases Portland or New York or elsewhere, and they needed to have a knowledge of what their billing was, how [105] it would come to them, what would be approvable, how it could be simplified, what the cost would be. All of these were complications, needless complications, where there were the several different systems of assessment. They resolved upon one uniform assessment, and that lead to complete meeting of the minds as to the assessment system being a single method ascertainable from the manifest which the owner always has in front of him, which the stevedore always has in front of him, because it is the basis of his revenue, and which could be clearly understood without any annoyance or uncertainty.

Q. Now, was that method of assessment or did that method of assessment meet with the uniform and unanimous approval of the representatives of the four associations which created the Coast Association?

A. All at Lakeside at this week's meeting were in agreement.

(Testimony of F. P. Foisie.)

Q. Were other methods proposed, examined and discussed? A. Yes.

Q. What were some of the other methods which were proposed, examined and discussed?

A. Several of them, starting at the low spot from the possibility of charging so much per dead-weight ton of ship, which was at once discarded on examination, going up to the proposal of charging on a man hour basis, which was rejected by the stevedores largely on the reasoning that it meant they would have to reveal their labor costs to their steamship companies. A mixture of systems was considered, but, principally, it was an issue of either payroll or man hours or tonnage.

Q. What was that about mixed? [106]

A. Combined systems, that we would have a better way by combining two or three different factors.

Q. Calling your attention again to Plaintiff's Exhibit 24, are you personally acquainted with the appointment of a so-called Seattle Committee with R. C. Clapp, chairman, F. E. Settersten, Sam Stocking and William Semar as members in Seattle?

A. Yes.

Mr. Gose: To avoid confusion, when you refer to Exhibit 24, minutes of March 10, 1943, Mr. Foisie was not present at that meeting, was he?

The Witness: No.

Mr. Dobrin: I didn't ask him if he was.

Mr. Gose: I was trying to clarify the point that he was not.

(Testimony of F. P. Foisie.)

Mr. Dobrin: No, he wasn't present.

Q. Are you acquainted with the correspondence which ensued between the so-called Seattle Committee and the so-called San Francisco committee that was present at that meeting? A. Yes.

Q. Did that correspondence result in a meeting of representatives from San Francisco, from Portland, from Seattle, and other ports at San Francisco on May 26, 1943?

A. Yes, but my memory is that San Pedro, although invited, did not attend. I am not sure of the latter, but I am of all the rest.

Q. I will show you what is marked Plaintiff's Exhibit 32 for identification and ask you if you recognize that as the minutes of the meeting to which I have just made reference?

A. Yes. [107]

Mr. Dobrin: I offer Exhibit 32 in evidence.

Mr. Gose: That is a committee meeting?

Mr. Dobrin: That is right.

Mr. Gose: I don't think it is an official gathering of any kind, but I am happy to have it go in.

The Court: Exhibit 32 offered; no objection; and it is admitted.

(Document previously marked Plaintiff's Exhibit No. 32 for identification was received in evidence.)

Mr. Dobrin: I presume counsel's pleasure or lack of pleasure at the admission of an exhibit is no part of the record.

Q. Did you preside at that meeting, Mr. Foisie?

(Testimony of F. P. Foisie.)

A. I did.

Q. Was Mr. N. J. Weber, Vice-President of the defendant, in attendance at that meeting?

A. Yes.

Q. Did he participate therein? A. Yes.

Q. Referring to the proposal adopted at that meeting for submission to the Coast directors, did Mr. Weber approve that proposal?

A. May I see that proposal please?

Q. Yes, certainly (handing document to witness). A. He did.

Q. I think I asked you if you were the presiding officer at the meeting. A. I was.

Mr. Dobrin: I would like to have your Honor read [108] that exhibit, Exhibit 32.

(Court reads Exhibit 32.)

Q. Was the proposal of May 26, 1943 the written proposal appearing in Plaintiff's Exhibit 32, submitted to the Board of Directors of the Coast Association the following day? A. It was.

Q. I show you what is marked Plaintiff's Exhibit 33 for identification and ask you if that is a copy of the minutes of the Board of Directors meeting of May 27, 1943, at which time the proposal referred to in Plaintiff's Exhibit 32 was submitted?

A. Yes, that is an excerpt from those minutes as it affects that proposal.

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 33.

Mr. Gose: No objection.

The Court: 33 admitted.

(Testimony of F. P. Foisie.)

(Document previously marked Plaintiff's Exhibit No. 33 for identification was received in evidence.)

Q. Calling your attention to that portion of the minutes appearing on Plaintiff's Exhibit 33 referring to out port conditions, I will ask you whether that had to do with questions arising out of methods of contribution to hiring hall expense in certain small ports. A. It did.

Q. And has nothing to do with the situation we are discussing here? A. It does not.

Q. Has that subject been fully settled and disposed of? [109] A. It has been.

Q. Were you subsequently, Mr. Foisie, kept fully advised of the subsequent activities in Seattle in connection with carrying out or attempting to carry out the details of Paragraph 2 of the proposal of May 26, 1943? A. Yes,—

Mr. Gose: Just a minute. Before you answer that—

The Witness: Pardon me.

Mr. Gose: —I rather formed the impression from the phraseology of the question that that is going to call for a hearsay response. There must be somebody connected with the Association who has firsthand knowledge.

The Court: You may read the question.

(Question read.)

The Court: Are you objecting on the ground that it is hearsay?

(Testimony of F. P. Foisie.)

Mr. Gose: Yes.

The Court: Overruled. He may say yes or no.

A. Yes, I was present at some of those subsequent developments.

Q. Well, the answer is yes.

A. Pardon me.

Q. Is that correct?

A. That is correct, sir.

Q. Were you present at a meeting in Seattle on January 5, 1944 when the Seattle Committee made its final report in reference to this subject?

A. I was.

Q. And did the chairman of the committee make such a report? [110]

A. Yes.

Q. And what did he report?

A. That the committee had been unable to make any progress on its own proposal which had been adopted by the Coast Board, and he asked, with the concurrence of the rest of the members of his committee, that that committee be discharged.

Q. Was Mr. Settersten at that meeting?

A. My recollection is that he was not.

Q. Were the other two members?

Mr. Gose: What is the answer?

(Answer read.)

The Witness: I don't remember Mr. Settersten being present.

Q. Do you recall that in addition to the chairman the other two members of the committee, other than Mr. Settersten were present.

(Testimony of F. P. Foisie.)

A. I feel confident that I recall Mr. Stocking being present and I think Mr. Semar was present.

Q. Do you recall that those other two members concurred in the chairman's report and application that the committee be discharged?

A. Yes.

Q. And was the committee discharged?

A. It was.

Q. Was the subject matter of the proposal of May 26, 1943 subsequently again considered by the Board of Directors of the Coast Association?

A. It was.

Q. And was it considered at a meeting of the Board of Directors [111] on February 9, 1944?

A. Yes, my recollection is that it occurred at an annual meeting, which would make it February 9.

Q. What did the Board of Directors do with the proposal?

Mr. Gose: Just a minute. I object to that. The minutes are the best evidence. Is there something on that?

Mr. Dobrin: Oh, there is nothing in it, and I would just as soon introduce the minutes.

Mr. Gose: If I could just see them, I would be very happy to have you read the minutes. I don't want him to get in the position of testifying to a lot of things and later finding out it is either contradicted or omitted.

The Court: We will be at recess for ten minutes.

(Recess.)

Mr. Dobrin: Mark this please.

(Testimony of F. P. Foisie.)

(Excerpts from minutes of Joint Annual Meeting of Boards of Directors on February 9, 1944 marked Plaintiff's Exhibit No. 36 for identification.)

Q. Have you testified that this matter of tonnage assessment was before the Board of Directors on February 9, 1944, and I ask you whether or not Plaintiff's Exhibit 36 for identification are the minutes, a copy of the minutes of that meeting.

A. Yes.

Q. Do those excerpts shown in Plaintiff's Exhibit 36 include other matters?

A. Yes, some out port matters.

Q. I notice that this Exhibit is headed, "Excerpts from [112] Minutes of Joint Annual Meeting of the Board of Directors of the Waterfront Employers Association of the Pacific Coast and the Waterfront Employers Association of California." So that there will be no confusion in the record, how is that accounted for?

A. The California Association now is made up of representatives, directors from San Francisco and from Los Angeles.

Q. The local association?

A. The local association. It is the State of California Association which now combines both ports, but with two distinct branches. Because the members, the directors, from the South were present at the time, we made it a joint meeting because we frequently combined business of the local association and the Coast Association.

(Testimony of F. P. Foisie.)

Q. In other words, a time-saving device?

A. That is all.

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 36.

Mr. Gose: No objection.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 36 for identification was received in evidence.)

Mr. Dobrin: Before I hand it to your Honor, I would like to ask the witness a few questions about it.

Q. On Page 2 of these minutes, Mr. Foisie, in the first two paragraphs the subject of hiring hall and port expenses in out ports is discussed. Is that the same subject to which I made reference previously? A. I think so.

Q. And that matter has been entirely disposed of? [113] A. It has been settled.

Q. In the third paragraph on the second page of this exhibit is a report relative to the tender by the defendant of their check to which reference has been made heretofore for their 1943 assessment, is that correct? A. Yes.

Q. Now, turning to page 3, the first paragraph refers to a suit against Western Stevedore Company. Has that litigation been terminated?

A. Yes.

Q. And is Western Stevedore Company paying up the assessments?

(Testimony of F. P. Foisie.)

A. They have paid up and are continuing to pay.

Q. The remainder of the page of that exhibit deals solely with the subject of hiring halls in out ports?

A. The expense of the hiring halls in out ports, yes.

Q. By the way, the Western Stevedore Company is a Seattle company? A. It is.

Q. And a member of the Coast Association?

A. It is.

Q. On page 4 of this exhibit is the entry relative to the matter of tonnage assessment in which we are directly interested at the moment?

A. Yes.

Q. Now, this exhibit says that Mr. Clapp and Mr. Middleton and Mr. Stocking were present. Are all those gentlemen from Seattle?

A. They are.

Q. And is this Mr. Clapp that is referred to the chairman of the so-called Seattle Committee to whom reference has been [114] heretofore made?

A. Yes.

Q. And also present was Mr. M. G. Ringenberg. Who is he?

A. The manager in Seattle on the Coast Association staff.

Q. Now, the Committee which was arranged or appointed by the Chair consisted of W. J. Bush, Tom James, W. T. Sexton, R. C. Clapp and Sam Stocking. Were W. J. Bush, Tom James, W. T.

(Testimony of F. P. Foisie.)

Sexton members of the so-called San Francisco Committee to whom reference has heretofore been made? A. They were.

Q. And R. C. Clapp was chairman of the so-called Seattle Committee? A. Yes.

Q. And Mr. Stocking is a resident of Tacoma? A. Yes.

Q. Mr. Foisie, referring again to Plaintiff's Exhibit 36 will you state who Mr. Harrison therein referred to is?

A. He is counsel for the Coast Association in San Francisco, a member of the firm of Brobeck, Phleger & Harrison.

Q. And is the Mr. Dobrin referred to in this exhibit myself?

A. One and the same.

Q. Referring to Mr. Harrison's statement as expressed there as to my views relative to the problem presented by the tender of a check in less than the full amount of the tonnage assessment, do you recall that despite Mr. Harrison's statement there, that I had a conversation with you over the phone about the suit?

A. You did.

Q. And do you recall that I expressed no doubt but advised you that you could not accept the check and still sue for anything [115] more?

A. Yes, sir, and we followed your advice.

Q. It was my advice to you that a defense would then be asserted of an accord and satisfaction?

A. You did.

(Testimony of F. P. Foisie.)

Q. And Mr. R. C. Clapp, to which reference has been made at various times in connection with this trial, is engaged in what business?

A. Stevedoring.

Q. And the name of his firm is what?

A. Rothschild-International.

Q. Rothschild-International Stevedoring Company?

A. Yes.

Q. And they operate in Seattle and other Puget Sound ports?

A. They do.

Q. Did the committee which was appointed by the chair as shown by the last page of Plaintiff's Exhibit 36 meet to consider the problems submitted to them by the directors of the plaintiff Association?

A. It did.

Q. How long did it meet?

A. The better part of a day and a half.

Q. Did that committee ever make a written report?

A. I think it did not. It drafted a report. It drafted something and then abandoned it as unworkable.

Q. Did the members of that committee report to you conclusions which they had reached, as president of the plaintiff Association?

A. The committee did.

Q. And what conclusions did they advise you that they had [116] reached?

A. That they could reach no program satisfactory even within the committee or which they felt

(Testimony of F. P. Foisie.)

could satisfy the Seattle members on the basis of a man hour program.

Q. What did they recommend?

A. Abandoning the effort.

Q. Was that the unanimous voice of that committee? A. It was.

Q. Physically, Mr. Foisie, what constitutes loading and/or discharging a vessel?

A. It means the lifting of the cargo at ship side and stowing it in the hold or on deck or the breaking out of the cargo from the hold and discharging it alongside of the ship.

Q. And is that operation commonly referred to as stevedoring? A. It is.

Q. Is the handling of cargo to the ship side from wherever it may be on a pier or dock or from the ship side to wherever it is thereafter going on the pier or dock referred to as handling?

A. It is.

Q. Is that likewise also expressed as dock work?

A. It is.

Q. The expression "terminal operators" has been used from time to time in connection with this trial. What type of service does a terminal operator perform?

A. Assembling and handling and delivering cargo on the terminal to or from cars, to or from trucks, to or from ship, to or from barge.

Q. Is the loading from or the discharge to cars, barges, [117] lighters, trucks, highway trucks or other means of public conveyance when alongside

(Testimony of F. P. Foisie.)

the ship a part of the loading and discharging operation?

A. If directly at ships hook, yes.

Q. That is to say, when that equipment is right at the vessel's side? A. Yes.

Q. Is that referred to as direct handling?

A. Yes.

Q. In the loading and discharging movement?

A. Yes.

Q. Now, in adopting the tonnage assesment in the by-laws, was that tonnage assessment adopted for charge against all members loading and/or discharging vessels? A. It was.

Q. Was it in any sense limited to the type of member the person might be in the Coast Association? A. It was not.

Q. Do all classes of members variously load and/or discharge cargo from time to time?

A. Yes, all three, terminal, stevedore and steamship companies, do at times load or discharge ships though, generally, steamship and stevedoring companies load or discharge ships. Occasionally a terminal operator will.

Q. From the beginning of the Association up to the present, has it always been the position of the Coast Association that whoever the member may be who loads and discharges the ship, that he is required to pay the tonnage assessment?

A. Yes? [118]

Q. Whether he be a stevedore or whether he be a ship operator?

(Testimony of F. P. Foisie.)

A. Yes, and in a few instances where terminal operators loaded or discharged cargo, the terminal company has paid.

Q. Is it correct then to say, Mr. Foisie, that the question of liability for the tonnage assessment rests solely on the question as to whether or not the individual loads and/or discharges the cargo?

A. That is right.

Q. Does the tonnage assessment have anything to do with what anyone may thereafter do with the cargo, after it is discharged or before it is loaded?

A. No.

Q. Have all types of members of the Coast Association paid the tonnage assessment for loading and discharging cargo from the beginning?

A. They have and do.

Q. I show you what is in evidence as Plaintiff's Exhibit 10, being the so-called memorandum agreement. Do you recognize that? A. I do.

Q. Will you please advise the Court why that particular memorandum of agreement was introduced in this question of tonnage assessment?

A. This was introduced at the request of stevedores, who wanted to be certain that the tramp vessels, the occasional vessels for whom there was no resident company or resident agent, all had this assessment, which is carried by the contract stevedore over into his contract, largely as a matter of being certain that there would not be unfair [119] competition between stevedores in manipulating cargo handling rates and because all of the steam-

(Testimony of F. P. Foisie.)

ship companies in competition with the tramp ships did not want to be at a competitive disadvantage, the member lines as against the non-member tramp ships.

Q. Now, I call your attention, Mr. Foisie, to Item 1 on the last page of the exhibit. Will you please explain to what subject that was addressed and its purpose?

A. We have encountered from time to time duplicate reporting and duplicate payment of tonnage tax by a steamship company and its stevedore or several steamship companies and their respective stevedores. We have an instance in point occurring here now. By giving stevedore companies a list of member companies who have accepted responsibility for paying the tonnage tax, they were thereby spared any necessity of paying any such tax and then having some readjustment made. There are member steamship companies who did not accept the payment of tonnage tax, and for those persons the stevedore does pay. The arrangement has varied with the several companies concerned. In the main, though by no mean always, the member steamship companies pay the tax direct; but there are still companies today that never have paid the tonnage tax, steamship companies for whom that tonnage tax has been paid by their contract stevedores.

Q. Now, in a loading and/or discharging operation by a stevedore member of the Coast Association for a ship owner members of the Coast Asso-

(Testimony of F. P. Foisie.)

ciation, is the obligation on both of those companies to pay the tonnage assessment?

A. It is; but it is only paid once. However, the contractual [120] arrangements are made between them, and those contractual arrangements vary not only between companies, but at times they have varied in the relationships of the two companies.

Q. Has the or had the practice in the past become quite extensive, that in the main the shipping companies reported the tonnage and paid the tonnage assessment? A. Yes.

Q. But in the way you have described that was not the universal practice?

A. By no means. That arises out of the habit of the steamship companies to pay once for all of their operations on the coast, which they, many of them, say, makes for a cleaner, firmer, tighter method of keeping their accounts than to have them come up through the several ports. Some of the companies prefer to have it come up through the several ports and have continued to use it through their stevedores.

Q. So far as the Coast Association was concerned, the payment of the tax by the one who loaded and discharged a vessel was all that has ever been required?

A. That is correct. Where it has been paid twice, it has been refunded. Our system of checking assures there can be no payment twice.

Q. But if it is, it is refunded?

A. Yes, it is refunded.

(Testimony of F. P. Foisie.)

Q. Have members of the Coast Association from the beginning loaded and/or discharged cargo for the Army, the Navy and other government agencies?

A. Oh, yes, the Department of the Interior and others.

Q. From the beginning of the Association? [121]

A. Yes.

Q. Have members who have so loaded and/or discharged cargo for the Army, the Navy, and other government agencies from the beginning paid to the Association the tonnage assessment?

A. Oh, yes; those who loaded or discharged the cargo.

Q. From the beginning? A. Yes.

Q. And still are? A. And still are.

Q. That includes the defendant in this case up to the end of the year 1942 so far as Army cargo is concerned? A. Yes.

Q. Has the defendant company reported and paid the tonnage assessment on cargo handled for the War Shipping Administration right up to and including 1944?

A. Yes, as long as it continued to unload cargo.

Q. Prior to this litigation has the defendant company ever raised any issue about paying the tonnage assessment on cargo loaded and/or discharged for the War Shipping Administration?

A. So far as my knowledge goes, it has never raised the issue officially, and I haven't heard of them having raised it unofficially.

(Testimony of F. P. Foisie.)

(Three contracts designated Exhibits 19, 20 and 21, numbered W2031-qm-477, O. I. No. 77; W 2031-tc-1190, O. I. No. 69; and W 45-045-tc- 274, O. I. No. 274-44, were marked Plaintiff's Exhibits 37, 38 and 39, respectively, for identification.)

Mr. Dobrin: I offer in evidence at this time Plaintiff's Interrogatory No. 5 to the defendant and [122] defendant's answer thereto as follows— Oh, I will have to go back. Plaintiff's Interrogatory No. 3 to the defendant and defendant's answer:

“In connection with your answer to Interrogatory No. 1, state or indicate in the information supplied in respect thereto which of the vessels were loaded or discharged for or on account of the United States of America and indicate for which agency thereof, as for example, the War Department, the Department of the Navy, the War Shipping Administration or other agency or subordinate agency.

“A. See answer to Interrogatory No. 1.”

The Court: You have offered Plaintiff's Interrogatory No. 3 and such answer?

Mr. Dobrin: Yes.

The Court: Admitted.

Mr. Dobrin: I offer in evidence Plaintiff's Interrogatory No. 4 to the defendant and defendant's answer thereto as follows:

“Q. If in connection with your answer to Interrogatory No. 3 you state or indicate that certain of the vessels were loaded or discharged for or on

(Testimony of F. P. Foisie.)

account of the United States of America, state whether such work was done under a written contract or contracts.

“A. All work performed in connection with the cargo mentioned in the answer to Interrogatory No. 1 was performed under written contracts with the War Shipping Administration and the United States Army, respectively.”

The Court: Admitted.

Mr. Dobrin: I offer in evidence Plaintiff's [123] Interrogatory No. 5 to the defendant and defendant's answer thereto:

“If in connection with your answer to Interrogatory No. 4 you state that such work was done under a written contract or contracts, furnish a copy of said contract or contracts, and if there are more than one contract, state as to each vessel under which contract the work was being performed.

“A. Defendant supplies herewith copies of the following contracts with the United States Army: 1. Contract No. W 2031-qm-577, O. I. No. 77, dated August 22, 1942 marked Exhibit 19. 2. Contract No. W 2031-tc-1190, O. I. No. 69, dated July 1, 1943, marked Exhibit 20. 3. Contract No. W 45-045-tc-274, O. I. No. 274-44, dated June 30, 1944, marked Exhibit 21.”

By agreement with counsel there has been eliminated from each of the three contract unit prices charged by the defendant for its services.

The Court: Admitted.

Mr. Gose: I think for the sake of clarity it

(Testimony of F. P. Foisie.)

might be stated for the record that those numbers 19, 20 and 21 were exhibits attached to the interrogatories.

Mr. Dobrin: If you will wait a minute, I will see there is no confusion about that. I now offer in evidence as Plaintiff's Exhibit 37 the exhibit 19 referred to in the last interrogatory and answer thereto.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 37 for identification was received in evidence.) [124]

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 38 the exhibit 20 referred to in the last preceding interrogatory and answer.

The Court: Admitted.

(Document previously marked as Plaintiff's Exhibit No. 38 for identification was received in evidence.)

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 39 exhibit 21 referred to in the last mentioned interrogatory and answer thereto.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit No. 39 for identification was received in evidence.)

The Court: Well, gentlemen, it is almost noon and I have some other matters. I think we should recess this case until 2:00 o'clock.

(Whereupon, a recess was had herein until 2:00 p.m.)

(Testimony of F. P. Foisie.)

The Court: You may proceed.

Mr. Dobrin: Mark this please.

(Letters dated September 2, 1944, and September 11, 1944, together with stevedoring contract marked Plaintiff's Exhibit 40 for identification.)

Mr. Dobrin: I offer in evidence as Plaintiff's Exhibit 40 the contract between the defendant in this case and the War Shipping Administration, being Contract No. WSA 4-1486.

The Court: That is a contract between——

Mr. Dobrin: The defendant and the War Shipping [125] Administration or more properly between the United States of America and the defendant.

The Court: Exhibit 40 is offered and admitted.

(Documents previously marked Plaintiff's Exhibit No. 40 for identification were received in evidence.)

Mr. Gose: I would like to have your Honor examine Exhibit 37 please. I desire, if your Honor please, to call your Honor's attention to certain portions of that contract at this time.

The Court: All right.

Mr. Dobrin: If you will note that Sheet 2, please—I think they are marked at the bottom—on Exhibit 37——

The Court: All right. I find it.

Mr. Gose: Those have been admitted in evidence, haven't they?

(Testimony of F. P. Foisie.)

Mr. Dobrin: Yes, they have. I just direct your Honor's attention to the coverage of the contract as it appears in the upper portion of that sheet, the loading and/or discharging of cargo. Then I call your Honor's attention to General Conditions on Sheet 2, Item B. First, I call your Honor's attention to the fact that the compensation provided for—and the amount of which is x-ed out—is on a unit price. Then if you will look in Paragraph B you will find a provision that the workmen's unit price is based on the straight time basis, and provision is made for work performed on an overtime basis. And I want particularly to call your Honor's attention to the fact that such rate on an overtime basis will include—and I am reading from B—“actual payroll costs per man [126] hour plus insurance, Federal and State taxes, assessments and other overhead charges.”

I call your Honor's attention to Paragraph D of the same agreement, in which provision is made for extra labor to be performed in addition to the unit price schedule—to the provision that such charges are to be based “on the actual payroll cost per man-hour and insurance, Federal and State taxes, assessments and supervisory charges.”

And I call your Honor's attention to a portion of this contract which you will find near the end of it, about the fourth sheet from the end, called “Change Order C” and to Paragraph (b) O, right in the center, and which also has a provision covering extra labor, and particularly call attention to

(Testimony of F. P. Foisie.)

the fact that the charges thereon are "based upon actual payroll cost per man per hour plus insurance, any Federal or State taxes, assessments and any other overhead charges."

Now, referring to Exhibit 38, if your Honor please—I may say that the previous contract is the one that covers to June, 1943—the next exhibit you are examining, 38, is from that period to June of 1944. And I call your Honor's attention on that exhibit to Sheet 2 which shows the work that is to be performed and the charge on a unit price basis, similar to in the previous contract, and then I call your Honor's attention to Sheet 4, "Special Conditions," Paragraph C, which is in the previous contract in reference to extra labor, that the same is based "on the actual payroll cost per man-hour plus insurance, Federal and State taxes, assessments [127] and any other supervisory charges."

And to Paragraph D, referring to Checking Services, and again pointing out that the charge is to be based "upon the actual payroll cost per man per hour plus insurance, Federal and State taxes, assessments and any other overhead charges."

And calling your Honor's attention to Sheet 5, Item F, which has to do with car loading and car unloading—well, I am not going to call your Honor's attention to that because that is on a different subject, so it will not be necessary to note that. I call your Honor's attention to Item J on page 5, where provision is made for compensation to the contractor in event of delays and that compensa-

(Testimony of F. P. Foisie.)

tion, as in the previous ones, is "based upon the actual payroll cost per man per hour plus insurance, Federal and State taxes, assessments and any other overhead charges."

Now, referring to Exhibit 39, this is the contract from July 1, 1944, to June 30, 1945, and I call your Honor's attention to page 2, Paragraph A, which covers the services to be performed at the rates as per a schedule to be attached; and then in connection with that contract I ask your Honor to look at Sheet 5, Item Q, referring to travel time, and point out to your Honor that "when the contractor is required to pay traveling time in accordance with existing agreement with Waterfront Employers Association to the men employed, the contractor shall be paid at the rate specified under travel time, Schedule 111, when approved by the contracting officer."

I call your Honor's attention to Supplemental Agreement C—it is the last three pages of the document—and I call your Honor's attention to this language occurring in the third paragraph of that Supplement C, "Whereas the prevailing rate of such subsistence allowance for longshoremen and stevedores in the Puget Sound area is per day, pursuant to agreement between Waterfront Employers of Washington and the International Longshoremen's and Warehousemen's Union, which was approved by the National War Labor Board through its Twelfth Regional Board, by an award

(Testimony of F. P. Foisie.)

dated and effective June 1, 1944," and the next paragraph,

"Whereas the existing recognized agreement between the Waterfront Employers of Washington and the Union requires employers of checkers, supervisors and/or clerks to pay such employees the expense of meals away from their home port, the prevailing and recognized allowance for which is two meals per day at per meal, amounting to per day," and on the next page of the agreement, paragraph numbered 2, the quoted portion, "When the contractor is required under prevailing labor agreements to pay allowance for subsistence, or per diem in lieu thereof, to long-shoremen, stevedores, checkers, supervisors or clerks who are employed and working away from their ports of registration, contractors shall be reimbursed"—and then going on with the nature of the reimbursement, showing the reference throughout those contracts to the labor agreements in force.

Now, coming to Exhibit 40, that agreement is in two parts. Unfortunately, I don't have a copy, but I will do my best to describe what I would like to have you look [129] at from my notes. I would like to have your Honor look in Part 1, Item 2 (b) (2). Does your Honor find that?

The Court: Yes, I find it.

Mr. Dobrin: (Reading) "As payment for supervision, use of gear, overhead and compensation on all cargo other than as described in sub-para-

(Testimony of F. P. Foisie.)

graphs"—and listing certain others—"at the rate of 22½¢ per ton."

The Court: That is not 2(b)(2).

Mr. Dobrin: I am sorry, your Honor. That is 2(b)(1). And then going back and looking at Paragraph 2(a) preceding that, "As payment for disbursements made or obligations incurred in connection with the work, a sum equal to the total of the amounts paid by the stevedore as wages, insurance and other authorized costs"—

I point those sections out to you to indicate that compensation under that contract is in two forms: One is payment for supervision and use of the gear furnished, a compensation in a limited sum; the other for the actual cost incident to the payment of wages.

Then if you will kindly look at Part 2, Section 1(b), do you find that?

The Court: Section 1(b)? I have it.

Mr. Dobrin: Yes, I think it is the second paragraph of that, which reads:

"The term 'wages'"—Is that the way it reads?

The Court: Yes.

Mr. Dobrin: (Reading) "The term 'wages' as used in this contract does not include contributions or payments made by the stevedore for the maintenance of hiring [130] halls as such contributions or payments are part of the stevedore's general supervisory and administrative expenses and are not expenditures for wages," showing that that item is included in the item in Part 1, Section 2(b)(1) to

(Testimony of F. P. Foisie.)

which I called your Honor's attention, and not in the part relative to wages.

Q. Mr. Foisie, do you have with you a copy of Exhibit 34?

A. If that is a copy of the agreement?

Q. That is correct. A. Yes.

Q. Now, if you will refer, your Honor, to Exhibit 34 please; Mr. Foisie, will you please take Exhibit 34 and point out to the Court those obligations of the Waterfront Employers Association of the Pacific Coast under that agreement to be performed for and on behalf of its members that no member itself could perform?

A. Begining on page 1, Paragraph 1, the Coast Association on behalf of the Waterfront Employers of Washington and so forth negotiates the contract, makes the agreement, and in case, at the bottom of page 1, either side opens up the agreement within 60 days, 60 days prior to the conclusion of the agreement, then the Association either itself makes proposals for the members or deals with the proposals made by the Union.

Q. Now what Association does that?

A. The Coast Association. I will try to make that clear hereafter.

Q. Well, is it fair to say this, that whenever you are referring to an Association in connection with this agreement, [131] you are referring to the Coast Association?

A. I think in all instances, yes. We may turn now to page 8, Section 4. The hiring halls are set

(Testimony of F. P. Foisie.)

up in the several ports under joint control, operation and expense. The Coast Association having the entire cost of the employers part of that expense, and the local association or member association, in this instance Washington, having no part of that expense.

Q. And no individual member?

A. And no individual member having any expense whatsoever in connection with the hiring halls. On the next page, Section 6, no individual has anything to do with the determination of the application of that section having to do with preference of employment.

Mr. Gose: Pardon me. I don't follow you. Which page are you referring to?

The Witness: Page 9, Section 6. I am sorry.

A. (Resuming) No individual member has anything to do with the matter of preference of employment. That is entirely a matter of the Coast Association working through the Joint Labor Relations Committee. If there is to be an objection by an employer to any particular man under the preference clause or the registration clause, that objection must be through the Association and under its policies and by its representatives. In the second item, Section 7, page 9, Election Day, no individual employer makes the particular hourly arrangements about when his employees may go to vote. The Labor Relations Committee works with the Union to set a uniform time. Usually it means that on election day the Union and the Association

(Testimony of F. P. Foisie.)

agrees in all [132] ports to have no work done between 7:00 and 9:00 in the morning. Men who might report as early as 7:00 or 8:00 o'clock are ordered to report at 9:00 instead.

Section 8, all of the hiring halls in the larger ports and all those in the smaller ports, a total of fifteen on the coast, where they have them—in some of the very small ports they don't have hiring halls—all of those hiring halls are set up by the Employers Association of the Pacific Coast and under its control and at its expense though administered through the local association.

Page 10, Section 9, there is established therein a Coast Labor Relations Committee of six members, three designated by the Coast Association and three by the Coast Union. The port Labor Relations Committees are established in consonance with this agreement by the port association and the local union and under the direction and control of the Coast Union on the one hand and the Coast Employers Association on the other. The second paragraph of Section 9, "The Coast Labor Relations Committee shall have power and jurisdiction to determine any question involving the interpretation of this agreement and to decide any dispute arising thereunder. The Coast Labor Relations Committee shall have power to set aside any decision or other action of any port Labor Relations Committee and shall have the power and duty to establish uniform coast working and dispatching rules for any or all of the ports affected hereby and to interpret and

(Testimony of F. P. Foisie.)

apply the same.” That is by request of the different unions as a result of experience and similarly out of the experience of the Coast Employers Association because only [133] in that way could there be reasonable uniformity in the administration of this contract and the minimizing of disputes. When a Coast arbitrator is selected at the beginning of the contract, each time it is amended, the selection of the Coast arbitrator is by the Coast Association with the Coast Union, or if they fail to agree or by request of either party to the Secretary of Labor. There was prior to the war—on page 11, the first complete paragraph—the naming of arbitrators’ agents. They have been set aside for the war, but will be resumed following the war. Quoting from that paragraph: “All expenses of the Coast arbitrator and of the arbitrator’s agents and their respective compensations or salaries shall be equally borne by the parties.”

Q. And by that reference to “parties” is meant whom?

A. The parties who made the contract, the Coast Association and the Coast Union. (Reading) “In the event that any port Labor Relations Committee shall fail to agree on any question before it, it shall be immediately referred at the request of either party to the Coast Labor Relations Committee for decision. In the event that the Coast Labor Relations Committee fails to agree on any question involving the interpretation of this agreement or any dispute arising hereunder, or upon any other ques-

(Testimony of F. P. Foisie.)

tion of mutual concern not covered by this contract and relating to the industry, such question shall, at the request of either party, be referred to the Coast arbitrator for decision." All hearings before the arbitrator are held by and in the name of and at the expense of the Coast Association for the employer. [134]

The Court: Is there any reason to take this time to have the witness read an exhibit?

Mr. Gose: Not as far as I am concerned.

Q. It is not necessary that you read anything from the contract. Just eliminate that. All I want you to do is point out those parts of the contract which only the Coast Association can perform for its members.

The Court: Why cannot counsel do it in argument?

Mr. Gose: I may say, your Honor, I have a line of objection to all of this line of testimony as to all the things that the Coast Association does. I think they are in no sense material.

The Court: It seems to me the witness so far has only been saying things that you can say in argument.

Mr. Dobrin: I know, your Honor, but I didn't know but what maybe it would be preferable to have the witness testify to that.

The Court: If this contract is unclear and does not state it and requires the witness to interpret it, then we come to the question as to whether we have an ambiguous contract that we have to interpret.

(Testimony of F. P. Foisie.)

But if the contract is clear, there is no reason for the time being taken. Now, you know whether it is obscure and ambiguous and clear.

Q. In the light of the Court's remarks, Mr. Foisie, is there any special section of the contract then to which you would want to make reference?

A. None except as it is clearly set forth in the contract itself where the references, I think, are self-revealing.

Q. Mr. Foisie, I think the testimony already shows, but are [135] the employees of the defendant in this case dispatched to handle other work as a result of this agreement?

A. Yes, in port labor work.

Mr. Dobrin: Mark this please.

(Tabulation of total man hours for Puget Sound District and total man hours for "Griffiths Company," 1943, (same district) was marked Plaintiff's Exhibit No. 41 for identification.)

(Similar tabulation for 1944 was marked Plaintiff's Exhibit No. 42 for identification.)

(Tabulation for 1943 of total Seattle man-hours (Seattle) and Griffiths man-hours (Seattle) marked Plaintiff's Exhibit No. 43 for identification.)

(Similar tabulation for year 1944 was marked Plaintiff's Exhibit No. 44 for identification.)

(Testimony of F. P. Foisie.)

Q. Will you inspect Exhibit 41, Mr. Foisie, and tell us what that exhibit purports to disclose?

A. This is a compilation and a comparison of the total man-hours for the Puget Sound District of member companies with the Griffiths Company, set out for comparative purposes; that is Griffiths and Sprague.

Q. For what year? A. 1943.

Q. And is it divided between the man-hours of work both ship and dock?

A. It is, and it is separated for the ports of Seattle, Tacoma and Everett.

Mr. Dobrin: I offer Exhibit 41 in evidence.

Mr. Gose: I am not clear what the purpose of it is. Your action, of course, is on the 21½¢ tonnage tax. [136]

Mr. Dobrin: That is right.

Mr. Gose: May I inquire as to the purpose of offering the man-hour schedule?

Mr. Dobrin: You may inquire if you are objecting, but if you are not I don't think the answer is material.

Mr. Gose: Then I will object, your Honor, on the ground I can see no materiality to this schedule of number of man-hours of work done where the suit is predicated entirely on the amount of tonnage handled.

Mr. Dobrin: The purpose is to show the extent to which the defendant in this case uses the services of the plaintiff.

The Court: Ruling reserved.

(Testimony of F. P. Foisie.)

Mr. Gose: I will say for the sake of the record I should then amplify my objection to the extent of saying this, that I take the position it is utterly immaterial, to what extent we used their service. Their suit for tax is not predicated on that at all. The claim in this case is predicated upon the tonnage assessment.

Mr. Dobrin: That is correct.

The Court: Exhibit 41 has been offered, objection has been made and ruling is reserved.

Q. With reference to Exhibit 41, what does the expression used on that exhibit of "ship" refer to?

A. That means the man-hours used in loading or discharging vessels.

Q. What does the expression "dock" mean?

A. In connection with the computation it means the number of man-hours worked handling cargo anywhere on the dock other than the two sling men at the ship's side. [137]

Q. Are those two men at ship's side a part of the loading or discharging operation?

A. They are.

Q. They are the men who hook onto the ship's sling and release the ship's sling?

A. That is correct.

Q. Now, with reference to Exhibit 41, what percentage of the total man-hours of the entire Puget Sound District were used of the labor pool in this district by the defendant in this case for ship's work?

A. For ship's work, 42% of the man-hours were

(Testimony of F. P. Foisie.)

by Griffiths and Sprague of the total, including Griffiths and Sprague, of all employers in all Puget Sound Washington ports.

Q. And what percentage of the total man-hours of labor for dock work in the Puget Sound area did Griffiths and Sprague use? A. 15%

Q. And that is for the year 1943?

A. It is.

Q. And during that period in what ports were these men used?

A. Griffiths and Sprague men were used in the three ports of Seattle, Tacoma and Everett. The total man-hours included all the ports in addition to those three.

Q. I show you Exhibit 42 and ask you if that gives the same thing for the year 1944.

A. It does.

Mr. Gose: May the record show the same objection as to this exhibit?

The Court: Ruling reserved.

Q. Will you state the percentage of man-hours of the pool of [138] longshore labor in this district used by Griffiths and Sprague during the year 1944?

A. Griffiths and Sprague employed of all of the man-hours used by all the companies in loading and discharging cargo 43% of the man-hours and on the Dock 15% similarly.

Q. I show you what is marked Plaintiff's Exhibit 43 and ask you what that exhibit purports to show.

(Testimony of F. P. Foisie.)

A. That is a compilation of total man-hours in Seattle as distinguished from the area.

Mr. Gose: That is 42 you were talking about?

Mr. Dobrin: Yes.

Q. For what year? A. 1943.

Mr. Gose: May it be understood without the necessity of my interrupting that my objection runs to Exhibits 43 and 44 the same as to the previous Exhibits 41 and 42?

The Court: I think so that there will be no misunderstanding as to what you are objecting to, you should object in each instance.

Mr. Gose: Very well.

Q. Go ahead.

A. This is the compilation for 1943 of the total Seattle man-hours ship and dock and the total Griffiths and Sprague man-hours ship and dock for Seattle.

Q. What for the year 1943 was the percentage of total man-power pool in Seattle that Griffiths and Sprague used for ship work?

A. 53 and something; more than 53%.

Q. And for both ship and dock work? [139]

A. I am sorry. I will have to compute this. I think my previous computation here is in error. I think about 40%. I am not sure of that figure, and I would like to verify it.

Q. In any event, that is a mathematical computation by adding the column?

A. That is right.

Q. I show you Exhibit 44 and ask you if that

(Testimony of F. P. Foisie.)

gives the same information for the year 1944 as Exhibit 43 did for the year 1943? A. Yes.

Q. And can you tell us the percentage of the pool of labor in Seattle which Griffiths and Sprague used for ship work during 1944?

A. 63% of the ship work in Seattle was for Griffiths and Sprague and by them.

Q. And what was their percentage of all labor, both ship and dock? A. 40%.

Q. I call your attention to the month of November, 1944, and ask you whether that information is given without calculating any amount used by Griffiths and Sprague for that month?

A. Because no reports were made, the absence of Griffiths and Sprague figures, it would mean the percentages I gave you are below the actual figures, if we knew the Griffiths and Sprague figures for November.

Mr. Dobrin: I offer in evidence Exhibits 41, 42, 43 and 44.

Mr. Gose: If your Honor please, I think I will withdraw my objection that I previously made. I think those exhibits are satisfactory for some other purposes.

The Court: All right. Exhibits 41, 42, 43 and 44 are admitted, there being no objection and all previous objections thereto being withdrawn?

Mr. Gose: Yes.

(Documents previously marked Plaintiff's Exhibits 41, 42, 43 and 44 for identification were received in evidence.)

(Testimony of F. P. Foisie.)

Q. Were all the men to whom reference was made in the Exhibits 41, 42, 43 and 44 for man-hours drawn from the hiring halls in the respective ports?

A. Yes.

Q. And all subject to the contract in evidence here as Exhibit 34?

A. Plus the contract in Tacoma.

Q. Plus the contract in Tacoma, to which reference has been made.

A. Yes.

Q. And would that also require a further clarification as to men performing dock work under local dock agreements?

A. They all come from the halls.

Q. They all come from the halls also. Now, Mr. Foisie, will you please tell us what services of value in addition to the labor contract, which is in evidence, and other labor contracts concerning which you testified, are obtained by the defendant in this case by reason of its membership in the plaintiff?

A. First, as to the Association itself, membership in it——

Q. You are referring to the Coast Association?

A. Yes. Independent of the labor contract, the umbrella of the Association is held over the heads of all its members in time of difficulty, labor difficulty of any sort. The weight of the industry is behind each and every member of the Association, however small or large, and equally, if a member company is in distress on its labor problems, if a ship of a company is tied up——

(Testimony of F. P. Foisie.)

Mr. Gose: Just a minute. You are not maintaining this defendant is a ship owner?

The Witness: The defendant company works the ship. If the ship is tied up—I am not arguing; I am just explaining, sir.

Q. Proceed.

A. —the defendant company is then tied up. It ceases to work. I therefore treat the defendant company as I would the ship. If the defendant company happens to be the party at interest that is in trouble when the ship is not, the ship may leave, depending upon her schedule. If the ship is struck for other reasons and the defendant company might not be involved in that dispute, it will be an equally effective tie-up. We cannot very well distinguish between the two because if either is struck, ship or stevedore, both are struck. I think that is a fair statement out of much grief and a lot of experience, so much that there is provision made in our Articles and it has been exercised whereby financial help is provided a member company in difficulty. There has been such instances where stevedores have been compelled to reimburse where circumstances warranted it; ships similarly where they were struck by port labor. There is the association value, [142] the cooperative relationship between competitors in a common endeavor dealing with common problems. There is the pooling of experience back and forth. There is even the interchange of gear and sometimes supervisory forces. Men representing member companies in the As-

(Testimony of F. P. Foisie.)

sociation and holding office among their peers exercise the leadership which goes with that the same as leadership in other fields. There are the satisfactions which come to men today under modern complex conditions——

Mr. Gose: Oh, if the Court please, I wish to interpose an objection to this line of testimony. These are very indirect and abstract benefits that he is talking about to individuals who may be officers of a corporate body which may or may not benefit by virtue of that fact. I think this is altogether too ephemeral and indefinite to be of any value as evidence on the question propounded to the witness.

Mr. Dobrin: I can't agree at all; that is part of the very purpose of such an association, and I——

The Court: (Interposing) Well, counsel, we go now to the question of my right to hear him testify to this. I am not bound to accept his conclusion. If, for instance, he testifies it is of value to the defendant for one of the defendant's officers to be an officer in the Association, it is for me to determine whether that is true or not. I think I will hear it. I may say to counsel that I am not as sure as counsel for the plaintiff or the witness that some of these things are of economic value. You may proceed.

Mr. Dobrin: I am attempting to demonstrate it, [143] your Honor.

The Witness: I will be glad to elaborate on that phase of it.

(Testimony of F. P. Foisie.)

Q. No, proceed.

A. Three members of this firm have held offices in either the local or Coast Associations. One of them all the time in my own acquaintance with him of nearly 25 years. He held office on which from my own intimate acquaintance with him, he placed high value for the resulting status commercially. I think that at least he certainly was satisfied with the relationship.

The Court: (Interposing) Now, just a moment. I will have to strike that.

Mr. Dobrin: That is a little argumentative.

The Court: The conclusion that this witness has that somebody placed value on it will be stricken.

Mr. Dobrin: I agree that that is argumentative.

A. (Resuming) Now, in the sphere of dispute between all branches of the industry and the Wage and Hour Division, and with which the Army, Navy and War Shipping are concerned, there is a matter in which we are deeply engrossed and on which we are spending much time. If the Association loses its case before the Wage and Hour Division in the courts, it is calculated by the members affected, including this defendant company that they will be out of business. We have recently secured, counsel and myself, from the Army, Navy and War Shipping authorities in Washington within the month an amendment of all stevedore contracts with all member companies on this Coast which, at least, will protect all of the member companies beginning [144] February 1st of this year for the

(Testimony of F. P. Foisie.)

future in event of an adverse decision and which for the past leaves the door open for possible reimbursement by congressional relief. And in this issue, by very good fortune, the industry does not stand alone, but has the support and in fact the lead taken by War Shipping, Army and Navy, because they recognize, all branches of the services recognize, that if the courts should hold adversely to their belief as well as our belief, the back wages due coupled with liquidated damages would be ruinous.

Q. And in that activity on behalf of the members has the Coast Association performed that service?

A. It has.

Q. And is it likewise performing that service at the request of the Army, Navy and War Shipping?

A. We are in complete accord and under their leadership. We are developing the industrial background, which will be the basis for the court suit.

Q. Are those three branches of the government calling upon the Coast Association to furnish the data necessary for the defense of the problem involved?

A. They are, and we have furnished it and will continue to.

The Court: This is a time and one-half dispute?

The Witness: It is something which threatens to engulf us.

The Court: I won't say for overtime; I will say for alleged overtime because that is probably——

The Witness: That is the issue.

(Testimony of F. P. Foisie.)

The Court: You are contending it is not overtime and your opponents are contending it is? [145]

The Witness: Pardon me, your Honor. We are contending it is true overtime when it is time and a half under the labor contract. The Wage and Hour Division is contending it is not.

The Court: All right. There is a dispute as to whether it is or is not.

The Witness: That is correct.

Q. Now is the handling of that matter one involving expense? A. Heavy.

Q. And the Coast Association on behalf of its members is bearing that expense?

A. Entirely.

Q. Do you have anything to add now, Mr. Foisie, to any of the testimony that you have heretofore given in direct answer to this question on the subject of services rendered by the Coast Association for its members?

A. I think it need not be repeated so long as it is understood, that to a substantial extent, not exactly measurable, the work of the Accident Prevention Bureau of the Association, at an \$80,000 expense last year and \$100,000 this year, has been a significant factor, by no means the exclusive factor, in the reduction of the premium costs, which have fallen steadily on this Coast to the point where it is 8.6 compared with the East Coast, where this effort is not conducted, of 15% of the payroll.

Q. And when you say 8.6, is that 8.6 per cent?

A. Eight and six-tenths of the stevedore dollar

(Testimony of F. P. Foisie.)

as against 15c of the stevedore dollar on the East Coast. It is true that the services receive the benefit of that, at least in the cost plus and fixed fee, but it doesn't in any [146] sense alter the commercial benefit to the member companies.

Q. And those percentages to which you referred are insurance premiums?

A. That is correct, for offshore insurance.

Q. In your testimony previously, Mr. Foisie, reference was made to Mr. Joseph Weber of Griffiths and Sprague, the stevedore defendant, and I wish you would tell us, with the dates, the offices that Mr. Weber held both in the Washington Association and in the Coast Association.

A. I think I did before.

Q. I don't think you gave the dates. I think you covered it just generally.

A. He was the chairman of the committee appointed to employ a manager in 1920. He was vice president of the Waterfront Employers of Seattle in 1922; president in 1923-24; trustee in 1923-41, the time of his retirement. All this was in connection with the Waterfront Employers of Washington. From 1929 to 1933 he was a member of the Joint Committee of men and management; he was a member of the early Safety Committee—helped organize it—from 1924 to 1930; he was a member of the Safety Committee in 1936-40, when it had been converted to a Coast Committee.

The Court: It is understood that any time any

(Testimony of F. P. Foisie.)

party wishes to object, that they have to make their objection known.

Mr. Gose: If the Court please, I don't know how long you want us to be entertained, but I am certainly objecting to all this line of testimony. I haven't been able to see, if your Honor please, since the beginning how the fact that one of the defendant's officials or [147] employees held a position in the plaintiff company had anything to do with the issue in this case.

The Court: Well, counsel, I am interested in the time. It is always helpful to a court or jury to have enough of the history so that the court or jury understands the critical period. But it seems to me the history has been pretty substantially given, and I now can see no help to me in knowing whether Mr. Weber was or was not an officer of an organization which existed before the plaintiff ever came into being.

Mr. Dobrin: Well, he has mentioned the last of that. There will be no more mention of that.

Mr. Gose: What he has mentioned to date, if I understand it correctly, is not any position held with the plaintiff but with the Washington Association.

Mr. Dobrin: No, you didn't understand it correctly.

The Court: Well, it couldn't be the plaintiff prior to 1937, obviously.

Mr. Dobrin: That is right.

Q. Now, you may proceed, and from this point

(Testimony of F. P. Foisie.)

on with Mr. J. Weber leave out anything prior to 1937 which has anything to do with the Coast activity.

A. From 1937 to 1941 he was continuously an associate director of the Coast Association and met quarterly in San Francisco.

Q. Now, will you state what offices the defendant's president Frank Settersten has held and does hold with the Waterfront Employers of Washington?

A. In 1940 a member of the Accident Prevention Committee. 1942 to 1945—— [148]

Q. Not too fast. In 1940 he was what?

Mr. Gose: That was the Waterfront Employers of Washington?

Mr. Dobrin: No, the Accident Prevention Bureau.

Mr. Gose: I thought your question was——

Mr. Dobrin: It was with both.

Mr. Gose: Both? I will object in so far as it pertains to the Waterfront Employers of Washington. I don't think that is material.

The Court: I think in any event the question should be segregated. You may ask him what offices he held with plaintiff.

Q. What offices did he hold in connection with Coast activities directly?

Mr. Gose: Now, I object to that, if the Court please. If he means with the Coast Association, using the term interchangeably with the plaintiff,

(Testimony of F. P. Foisie.)

that is one thing, but this Coast activity in another thing.

Q. Well, Coast Association.

A. He was a member in 1940 of the Accident Prevention Committee for Seattle of the Waterfront Employers Association of the Pacific Coast.

Q. What offices or committee service did he perform or has he performed for the Waterfront Employers of Washington?

A. A trustee from 1942 to 1945; and continuing, a member of the Finance Committee.

Q. He is still a trustee of the Waterfront Employers of Washington?

A. And continuing; and a member of the Finance Committee during that period of time. [149]

Q. Now, referring to M. J. Weber, vice-president of the defendant, what offices has he held in connection with the Coast Association?

A. As a member of the Puget Sound District of the Accident Prevention Bureau from 1939 to 1941; in 1941 the chairman of the sub-committee of publicity and safety awards of that bureau of the Coast Association.

Q. Now, what are the activities of that sub-committee?

A. It is the development of education work with men and companies and the building of competition for the reduction of accidents through the setting up of safety awards. It is about the most effective part of the work of Accident Prevention that could be imagined.

(Testimony of F. P. Foisie.)

Q. Following 1942, did he serve on that committee?

A. He has served on the committee from 1942 through 1943 and 1944 as a member of the committee.

Q. That is the Accident Prevention Committee?

A. That is correct.

Q. And what special position did he hold in 1944 on that committee?

A. I think he was vice-chairman.

Q. In 1944? A. Yes.

Q. Did Mr. Weber serve on the Allocation Committee of the Coast Association?

A. I am not very clear on that. I knew one time when he did several years ago. I don't know what he has done in that direction later.

Q. Do you know whether he did in 1942?

A. I think that was about the time I knew he served in that [150] relationship. That is the committee allocating gangs. We have two forms of allocation, ships and gangs.

Q. Now, is that the allocation function which you described previously in your testimony?

A. Yes.

Q. What does this committee of members do in connection with the staff representative of the Coast Association to whom you referred?

A. When the staff representative gathers all the data and there is a shortage of gangs to meet the need, the committee decides in peace times where they are to be used. Under war time, the circum-

(Testimony of F. P. Foisie.)

stances of urgency of certain ships and the willingness and ability of other ships to delay governs which gets the men.

Q. Has Mr. Weber served on the Labor Relations Committee created under the Coast agreement, Exhibit 34? A. Faithfully.

Q. During what period of time?

A. For the last three years at least.

Q. And at the present time?

A. And at the present time.

Q. And that is the committee which manages the Coast Association agreement locally subject to the reviews which you have and restraints which you have described?

A. That committee administers the agreement in this area.

The Court: Counsel, during the recess I would like to have you seriously consider the plan for what evidence there is to be. It is patent, of course, that this case cannot be finished today, but I see no reasonably opportunity to give you more than Tuesday of next [151] week, and it must be considered that the defendant is entitled to its day in court.

(Recess.)

Q. In referring to the matter of insurance in connection with the Accident Prevention Bureau, you referred to insurance offshore. What were you speaking about there?

A. That is the workmen's compensation insurance required under the Longshoremen's and Har-

(Testimony of F. P. Foisie.)

borworkers' Act, a Federal Act to cover the off-shore personal injuries to longshoremen and other harbor workers.

Q. Mr. Foisie, are you acquainted with whether or not the Army, the Navy and the War Shipping Administration allow the 21½c tonnage assessment as overhead expense of the contractors performing loading and discharging operations for them?

A. I am.

Q. What is their position?

A. They do so allow it.

The Court: What is that?

The Witness: Army, Navy and War Shipping Administration.

Mr. Dobrin: You may inquire.

The Court: Allow these assessments for what?

Mr. Dobrin: As part of the overhead expense of the contractor performing loading and discharging operations for them.

Cross Examination

By Mr. Gose:

Q. Mr. Foisie, I am going to try to ask you as simple and [152] direct questions as possible, and would you please try to answer them in the same fashion? A. I shall try.

Mr. Dobrin: I don't think he should instruct the witness. Let him go ahead and inquire.

Mr. Gose: I am just trying to establish a harmonious relation.

Mr. Dobrin: There is no lack of harmony yet.

(Testimony of F. P. Foisie.)

Q. You mentioned the fact that Mr. Joe Weber was director of the plaintiff corporation from the time of its organization?

A. That is right.

Q. I am going to hand you Plaintiff's Exhibit 1, and I notice in Article 4 there are the names of 17 persons who were the first directors. Is the name of Joseph Weber contained in these 17 names? A. No.

Q. I will ask you to turn over one page and look at the signatures to the Articles of Incorporation, and I will ask you if the name of Mr. Joseph Weber appears there.

A. That is correct; it does not.

Q. The fact of the matter, as I understand it, Mr. Foisie, is that Mr. Joseph Weber was an associate director, wasn't he?

A. That is correct. I think I replied previously that he was an associate director.

Q. And as an associate director he had no vote, did he? A. That is correct.

Q. Now, Mr. Foisie, there are two kinds of members of this corporation, aren't there, is that correct? [153] A. Yes.

Q. And what are they called?

A. Voting members and associate members.

Q. And to be a voting member one must be a steamship company or an agent for a steamship company, is that right?

A. That is correct.

(Testimony of F. P. Foisie.)

Q. And to be an associate member one must be some other type of employer of longshoremen?

A. That is correct.

Q. And the defendant in this case is an associate member, is that correct? A. Yes.

Q. And has never been a voting member?

A. That is correct.

Q. And can never be eligible to be a voting member under the present Constitution and by-laws unless he becomes a steamship operator?

A. Correct.

Q. Does your corporation have a membership book?

A. Yes, I think so. Mr. Boyd, the secretary, can answer the question better.

Q. Are you aware of one personally?

A. Of what?

Q. A membership book.

A. We have a roster of members. I am sorry I don't know what you mean by a membership book.

Q. You have never been advised, I take it, that the laws under which you are organized require this corporation to have a membership book?

A. I am sorry; I cannot say. [154]

Q. You don't recall being so advised?

A. No, we have membership signatures. If that constitutes a book——

Q. Now, taking the defendant in this case, it is an employer of longshoremen, isn't it?

A. Yes.

(Testimony of F. P. Foisie.)

Q. And it is a fact, isn't it, that it must obtain its longshoremen through the local hiring halls as long as the hall has longshoremen available?

A. As a member it must.

Q. As a matter of fact, it would be impossible for it to do business in this port without following that procedure, wouldn't it?

A. As a member it would be. Otherwise, it would be in violation of its labor contract.

Q. They would have to get out of this organization and not be a party to that labor contract. And you know perfectly well in the light of your experience that it would be practically impossible for it to operate without Union longshore labor in this port?

A. That is correct, but that doesn't mean they couldn't get Union longshore labor by making another agreement.

Q. I am not asking you that. I am just asking the question, they couldn't operate in this port without having Union longshore labor?

A. But they could get Union longshore labor by going to the same Union.

Q. Please answer the question. They couldn't operate without Union longshore labor?

A. Yes. [155]

Q. You mean they couldn't operate?

A. They couldn't operate other than by Union longshore labor under this contract.

Q. Mr. Foisie, I believe that it is a fact in this particular port at the present time this de-

(Testimony of F. P. Foisie.)

fendant does employ labor from other places than the hiring halls. Do you know if that is a fact?

A. I understand so in connection with operations not under its port labor contracts but further uptown in the yards. But that is something I am not particularly familiar with.

Q. Do you understand that that occurs after the supply of Union men from the hiring hall has been exhausted?

A. I am not familiar with beyond our own responsibility.

Q. You are not familiar with that. I shall accept your answer. You are president of the Coast Association, plaintiff in this case. What position does Mr. Middleton, the gentleman sitting here—is that correct?

A. Correct.

Q. What position does Mr. Middleton hold?

A. Vice-president for the Northwest.

Q. He is a vice-president of the Coast Association?

A. Yes.

Q. He resides in Seattle?

A. He does.

Q. And is in a Seattle office here? That is his place of work?

A. That is correct.

Q. And is he also—do you know, an officer of the Washington Association?

A. He is. [156]

Q. Does he receive compensation from both Associations?

A. He does.

Q. One salary as vice-president of the Coast Association——

A. (Interposing) He receives one salary divided by agreement.

(Testimony of F. P. Foisie.)

Q. Let me put it another way, Mr. Middleton receives one-half of his compensation from the Coast Association, is that correct?

A. Yes.

Q. And the other half from the Waterfront Employers of Washington? A. No.

Q. From whom?

A. A part of the other half from the Waterfront Employers of Washington and the other part from the Waterfront Employers of Portland.

Q. Mr. Ringenberg's name has been mentioned from time to time. He lives in Seattle, too, doesn't he? A. Yes, he does.

Q. What connection does he have with the Coast Association?

A. He is the manager selected by the local trustees at the expense of the Coast Association responsible to the local trustees, administratively to the Coast Association on policy.

Q. Does any part of his compensation come from the local association?

A. If so, I am not aware of it. I think the local association gave him a small amount of pay for incidental supervision and central pay service and collective reporting. His salary comes from the Coast Association. [157]

Q. Is he an officer of the Coast Association?

A. No, he is a staff member of the Coast Association.

Q. Mr. Boyd here that you mentioned before is the secretary-treasurer? A. He is.

(Testimony of F. P. Foisie.)

Q. Of the Coast Association? A. Yes.

Q. Residing at San Francisco? A. Yes.

The Court: What is his office?

The Witness: Secretary-treasurer of the Coast Association with office and residence in San Francisco.

Q. I think in passing in connection with your testimony on direct examination you mentioned that the Waterfront Employers of Washington bear the expense of two things, collective reporting and central pay offices? A. Yes.

Q. And then I think you defined those adequately on your direct examination, but to be sure I understand, collective reporting is a process by which the employers in this community report for the benefit of all through a central agency certain various items such as Federal taxes and so on that have to be reported to governmental agencies?

A. Yes.

Q. And that central pay offices refers to a practice obtaining in this port under which all stevedores, regardless of who they happen to work for, go to one place and receive their pay periodically?

A. Yes. I would suggest longshoremen is the correct term, the stevedore being the—— [158]

Q. Pardon me; longshoremen. A. Yes.

Q. Can you tell me, do you know by what means those two operations are financed? Is that a 1% payroll tax

A. It is a percentage of the payroll tax. I think it is still 1%. It varies.

(Testimony of F. P. Foisie.)

Q. Which is payable to the Waterfront Employers of Washington, the local port association?

A. Yes.

Q. Now, in connection with Plaintiff's Exhibit 34, Section 1, Paragraph 1, "The provisions of this agreement shall apply to all handling of cargo in its transfer from vessel to first place of rest, and vice versa, including sorting and piling of cargo on the dock, and the direct transfer of cargo from vessel to railroad car or barge, and vice versa, when such work is performed by employees of the companies parties to this agreement." I want just one little definition in connection with that. The first place of rest as referred to in there, "first place of rest, and vice versa" means what? Can you explain that briefly to us?

A. I cannot because arbitrators in at least 25 cases have given us variable definitions for varying conditions. I could give you a definition, but it will not be perfect.

Q. Let me put it my way and see if I am wrong. I am not after any very fine technical definition, but is it not true that there is included within the meaning of that section operations which Mr. Dobrin mentioned as being dock operations as well as those that consist of actually taking cargo in and out of the hold of the ship? [159]

A. I can't give you an unqualified answer. At times it does include such work; at other times and frequently it does not.

Q. Let me put it this way. Your contract with

(Testimony of F. P. Foisie.)

the Longshoremen's Union does apply to certain work done on the dock as well as that done in the process of loading and unloading ships, does it not?

A. That is correct.

Q. Longshoremen are employed for that dock work just the same as they are for loading cargo from the dock onto the ship and vice versa?

A. For part of the dock work they are.

Q. Longshoremen do carry cargo in and out of a dock or warehouse, if I may call it that? That is a longshoreman's operation, isn't it?

A. If it is within the definition of longshore work. The longshoremen usually secure work on the dock. Dock workers do dock work, but they are used frequently in this longshore business by that agreement.

Q. But they are men obtained through this hiring hall?

A. So are all the other men on the dock.

Q. Any employee that you use on the dock moving cargo in and out of the warehouse is covered by this contract, Plaintiff's Exhibit 34?

A. Oh, no; oh, no.

Q. Well, let me put it this way. Any such employee who is moving that cargo has been or must be obtained through a hiring hall if they have men available? A. Entirely correct.

Q. Now, on that Plaintiff's Exhibit 34, the last time you had any extensive negotiations under such contract was 1940, [160] was it not?

(Testimony of F. P. Foisie.)

A. Oh, no. I have been with it all fall and winter and am occupied in it right at the present moment.

Q. Perhaps I didn't put it properly. There has been no contract negotiated since 1940, has there?

A. No, but there have been contract negotiations at great length.

Q. But no other contract has been produced since that time?

A. No, the present contract, as I testified, continues up to the time the War Labor Boards hands down its amendment.

Q. You mentioned, Mr. Foisie, the Maritime Industry Board. Are the members of that Board paid by the government?

A. Yes. I wonder if the Court would care for a further explanation.

Q. I think it can be gone into on redirect.

Mr. Dobrin: We are very technical, Mr. Foisie. I will ask you about it when the time comes.

The Witness: I beg your pardon. I don't know the procedure.

Q. I think perhaps you have covered the next matter. I had noted here your legal counsel in San Francisco is Mr. Gregory Harrison.

A. Correct.

Q. And whenever that name appears on copies of any minutes that have been put in as exhibits, that is the gentleman who is referred to?

A. He is counsel for the Association.

Q. You used the expression on your direct ex-

(Testimony of F. P. Foisie.)

amination "contracting stevedore." Is that a briefly definable phrase? [161]

A. Well, there are persons better able to define it than myself, but I would be glad to attempt it.

Q. Well, perhaps I had better put the question this way, sometimes steamship companies do their own stevedoring? A. That is correct.

Q. While they are so engaged you would not refer to them as contract stevedores?

A. Not as long as they are handling their own cargoes on their own ships.

A. A contracting stevedore, I would then assume, is one who makes a contract with a ship owner for the loading of the ship owner's vessel or discharging it? A. Yes.

Q. And there is a distinction, I believe, between a contracting stevedore and a terminal operator, isn't there?

A. Sometimes each does both kinds of contracting, in some instances.

Q. What you mean, in some instances a terminal operator may do work for the owner of a vessel, and to that extent would be a contracting stevedore?

A. He might load and discharge cargo to and from the hold or deck of the ship, and in that regard, even though a terminal operator, he would be doing contract stevedoring.

Q. I think we understand each other on that. Perhaps I expressed my question imperfectly. Do you know whether or not it is a fact that in this

(Testimony of F. P. Foisie.)

port there are terminal operators who are doing no contract stevedore work?

A. Yes. Just a minute. There have been so many changes here recently in their functions, I don't know of a terminal operator here who is called definitely a terminal operator [162] who does stevedoring in this port.

Q. But you would not expect those who are referred to as terminal operators in this port to do contract stevedoring?

A. We would expect they would not, but in recent years, as the stevedores have cut in on their field, that is something for them to say. I have nothing to say about that.

Q. Now, just a word on the 4c per man hour—

A. (Interposing) Oh, I owe you a correction. I am not clear, but I think Mr. Tait, who is a new member—I think he does both.

Mr. Dobrin: Both what?

The Witness: Terminal work and stevedoring.

Q. In testifying in connection with Exhibit 11, which is that exhibit referring to a charge of 4c per man hour—perhaps I had better read it; it is very short, so that we will both be talking about the same thing. It reads as follows: "Be it resolved that effective May 1, 1940 each port association levy against non-members an assessment of 4c per man hour for all longshoremen ordered and dispatched from the hiring hall to perform their work, and that all man hour assessments collected be remitted to the Waterfront Employers Association of the

(Testimony of F. P. Foisie.)

Pacific Coast as part of the general funds of said Association."

Now, I want to be sure there is no mistake about interpretation there. The purpose of that resolution, as I understand it, is to assess any person who is not a member of the Coast Association 4c per man hour for each employee he gets out of the hiring hall?

A. That is my understanding of it. [163]

Q. So that if the defendant in this case were to withdraw from this Coast Association organization and then to try to hire men out of the local hiring hall, it would be subject to that 4c levy?

A. I am inclined to think so. We haven't faced that issue, so I don't know how the directors would decide the matter.

Q. That is your impression and always has been of what it means?

A. Well, this impression I gathered from the stevedores who were active in promoting this resolution.

Q. You have been president of the organization since 1939?

A. Oh, yes, I was president at that time and present on that occasion.

Q. Now do you recall you described a ship gang in your direct testimony. As I understood the description, the men that you mentioned were the men who do the work of getting the cargo from ship side into the ship or out of the ship to ship's side?

A. That is it.

(Testimony of F. P. Foisie.)

Q. The men that you mentioned did not include any men who might subsequently move the cargo from the ship side in or out of the warehouse?

A. That is not a ship's gang here.

Q. No. And you did not in any answer in talking about ship's gang deal with any such men at all?

A. No, solely those men between the sling and the hold.

Q. I think you said, but I want to be sure I am clear on it, that prior to the formation of the Coast Association, a member like the port of Seattle or a local association was financed by a tonage assessment on the steamship companies [164] and a payroll assessment on other members?

A. Yes there were many modifications of that. One company, I recall, at different years paid a flat rate per month. The matter was loose. Those steamship companies that paid the tonnage tax—I think the stevedore didn't pay the payroll percentage on it. I am not clear because that is a dozen years back, and the system was never very clearly set forth in the local association; but that is my general recollection.

Q. Now, in justifying from a practical standpoint the tonnage tax, you said by way of example, I believe, that the shipper in Liverpool or London or Naples——

A. The ship owner.

Q. The ship owner, yes, might be interested in knowing what sort of a rate he would have to bear if he sent a ship into Puget Sound?

A. Yes.

(Testimony of F. P. Foisie.)

Q. That is not a problem which exists with respect to United States Army cargo. In other words, we don't have any London, Liverpool or Naples ship owner with respect to Army cargo?

A. Not abroad, but in Washington you do.

Mr. Dobrin: Which Washington do you refer to?

The Witness: D. C.; excuse me.

Q. Counsel asked you with respect to Plaintiff's Exhibit 32, which is a Minutes of Joint Meeting of the Committee of the Seattle and San Francisco representatives regarding assessments.

A. Was that meeting here in Seattle?

Q. No, the one in San Francisco on May 26, 1943, and you were [165] asked whether Mr. M. J. Weber, who was later identified as vice-president of the defendant corporation, approved the Joint Committee report that forms part of that exhibit. You asked, as I recall, to see the exhibit, looked at it and stated that he did. I want to ask you if in making that statement you gathered that information in any way from the exhibit or from independent recollection?

A. From the exhibit, because if there had been a dissenting voice, it would have been recorded by the secretary; but it confirmed my memory. We always have as a matter of routine minute keeping a record of dissenting votes or voices.

Q. In that connection may I call your attention to the contents of the minutes. (Reading) "The meeting adjourned at 12:00 noon. and reconvened

(Testimony of F. P. Foisie.)

at 2:30 p.m., at which time the Special Committee's report was read (copy attached and made part of these minutes). Upon motion of Mr. Stocking, seconded by Mr. James, it was agreed to submit the committee's report to the Coast Board tomorrow."

As I understand your answer now, you were stating that Mr. Weber did not object because there is no record of any objection contained in those minutes? A. That is my recollection, sir.

Q. Now, I want to go into another subject with you briefly, Mr. Foisie. You defined loading and discharging cargo as being, if I understood you correctly—correct me if I did not—the operation of taking the cargo from the dock and putting it in the ship or vice versa, taking it out of the ship and putting it on the dock. That to you was the loading and discharging of cargo? [166]

A. Yes.

Q. Do you mean that it is the process that the stevedore does, that is, the loading and discharging of cargo?

A. I will try again to define it as the handling of cargo by man and by mechanism in the area covered and in the distance traveled between sling and ship's hold or ship's deck in loading, and the reverse process is discharging. That may be to dock direct; it may be to barge alongside.

Q. Yes, I understand all that. But what I am interested in is something different. If the contracting stevedore was engaged in the operation you just described, would he be the only one whom

(Testimony of F. P. Foisie.)

you would say in this way was loading or discharging cargo? A. Yes.

Q. Wouldn't the ship owner in some circumstances say the loading or discharging of the cargo of a vessel would be at such and such a wharf?

A. Oh, yes.

Q. In other words, when you are referring solely to the process of putting it in and taking it out, you recognize that the ship owner still may refer to it as I just did?

A. Yes, because it is for his account and under his direction with the master and the mates in the immediate supervisory control.

Q. All right. Then, as I understand, you say this tonnage tax was on the loading and discharging of cargo? A. That is correct.

Q. Might it not be just as well on the steamship company? A. It is frequently so assessed.

Q. Now, when your steamship company is doing this work through [167] a contract stevedore, wasn't it always the understanding—at least prior to 1940 that the steamship company member of the plaintiff Association was the party that was to pay that tonnage tax? A. Oh, no.

Q. Well, let me correct it. I recall that you said there were instances where it was not done. Wasn't that substantially the universal practice?

A. It was substantial; it was by no means universal. It has been growing steadily throughout the years. But there were many cases, early particularly and some remaining, where the steamship company

(Testimony of F. P. Foisie.)

doesn't pay the tax; but in the majority of cases it does; largely so and more and more year by year.

Q. Let's get down to a clear basis. I am talking about member steamship companies. Are we clear on that? A. That is right.

Q. Isn't it true that in those instances in which the member steamship company did not pay the tonnage tax on a cargo loaded in its own vessels, that the matter was handled by special agreement between that steamship company and the contracting stevedore?

A. There were many agreements of contract between the two about which we would know nothing. All we know is that we collect on all of the cargo handled and check to be sure that all the tonnage handled is reported and paid for, but it is paid for variously.

Q. Well, you don't collect twice on the same cargo?

A. Unfortunately, I am sorry to say, we have, but we have always corrected it where we collected twice. [168]

Q. It wasn't the purpose of any of your resolutions to collect twice?

A. You are entirely correct.

Q. What is that?

A. You are entirely correct.

Q. How do you determine then, when you have a member steamship company and a member contracting stevedore, which of them should pay the 2½c?

(Testimony of F. P. Foisie.)

A. Either one or the other would notify us.

Q. As far as the plaintiff Association is concerned, you were indifferent as to which one of them paid you?

A. Entirely so and still are.

Q. By the way, you don't know of any instance of the defendant having ever paid 2½¢ a ton for any member steamship company, do you?

A. I was trying to recall that this noon, and I don't recall any. The Japanese lines were members. I believe in all instances their local accounts were members. I don't recall any instance, and I tried.

Q. Can you give me an idea of what percentage of the tonnage tax has ever been paid by contract stevedores on account of cargo loaded by them for member steamship companies?

A. I could give you instances.

Q. No, I would just like an approximation of a percentage.

A. I couldn't other than to say that it was a minority, but it was not a small minority. It was a substantial minority, but it was never anything like half.

Q. Never anything like half? A. No.

Q. Would it be a quarter? [169]

A. It probably was less than a quarter even in the early days.

Q. And decreasingly less all the time?

A. Yes. There are some companies, of course, who continue to pay it today.

(Testimony of F. P. Foisie.)

Q. We have got it down to probably less than a quarter. Would it be 10%?

A. Oh, it would be more than that.

Q. Now, you defined handling as the conveying of the cargo, as I understood it, to the interior of the warehouse from the side of the vessel and vice versa?

A. Anywhere on the dock.

Q. Anywhere on the dock is handling?

A. That, I might explain, is a more or less established term in port cargo handling. It attaches to so many factors of rate making.

Q. Are these forms of expression at all hard and fast?

A. Pretty substantially agreed upon. For instance, there is an assembling and discharging—I think that is the tariff rate. I think that is the terminology that attaches to all handling between ship's side and place of rest. And handling cargo to cars and from cars is also a standard term. Handling attaches to handling cargo on the dock.

Q. In California, by and large, your stevedore operations consist of one operation combining the dock work and what you define as loading or discharging?

A. There is a diversity there, and more of what you describe there than here.

Q. Most of the work is done in that fashion down there?

A. Well, there is, for example, about 70 of what we call [170] shore to ship gangs down there out of 265. That will be evidence of shipside delivery.

(Testimony of F. P. Foisie.)

Q. So that by rapid calculation there will be 195 ship gangs and 70 shore gangs?

A. Long gangs we call them and the other shore gangs.

Q. Now, stevedore who is carrying on that operation, if I may use the term combined operation—you understand me? A. I do.

Q. —you would understand him perfectly if he said he was loading and discharging a ship. He wouldn't have to add, "I am also handling cargo"?

A. Oh, no, as long as he was loading or discharging the ship.

Q. I am including work by a skilled dock worker.

A. No, dock work has a different meaning. Car-loading is the term used down there for what you describe as dock work. It would very definitely mean that the vessel was loading or discharging. If he were doing it as a combined operation, it would include either to car alongside or the first place of rest or from last place of rest as those terms are variously described.

Q. I may be quibbling a little, but what I meant to inquire about was that in common parlance a man doing the entire operation might, if you asked what he was doing, simply say, "I am loading such and such a vessel at such and such a pier"?

A. That is right.

Mr. Dobrin: Just a minute. I move to strike the answer and object to the question as immaterial.

(Testimony of F. P. Foisie.)

Mr. Gose: He defined these things on direct examination.

The Court: It has already been asked and answered. It will stand as is. Objection overruled and motion to strike denied.

Q. I have asked you about the combined operation. Is split operation customarily used to describe a situation where one party does the dock work and one party does the work of putting the cargo in and out of the ship?

A. I don't think so. I mean I am not accustomed to the use of that term "split".

Q. Well, permit me to use it then.

A. Gladly.

Q. Let me ask you, is the operation such as I have described frequently referred to as a split operation in the Port of Seattle?

Mr. Dobrin: Just a minute. Objected to unless he tells what kind of an operation he is talking about.

Mr. Gose: I am going to.

Q. In the sense that a stevedore here may unload the cargo from shipside in or out of the vessel and someone else, either terminal operator or another stevedore, may handle the same cargo on the dock.

A. It is my recollection that the only time or the occasion when this term "split operation" arose was in the discussion of the Seattle group carried to San Francisco about this very problem you are men-

(Testimony of F. P. Foisie.)

tioning. That is my only recollection of the use of the term.

Q. But you do know cargo is handled in that fashion in this port? A. Yes. [172]

Q. And when that is done it is the claim of the plaintiff that the 2½c is payable entirely by the member who handles or unloads the cargo in and out of the ship?

A. Whoever loads or discharges the ship has the obligation to pay the 2½c, whether it be the steamship company or the stevedore doing that loading or discharging operation, and no other.

Q. Do you know that sometimes the party that works the dock beside that operation is also a stevedore member of the plaintiff association?

A. That, I think, is an entirely recent development. It was not a case formerly. I understand it is the case to a substantial extent now.

Q. And where it is the case now where the person working at the dock is a stevedore member of the Association, he is not, under the claim of the plaintiff, required to bear any part of the tonnage tax? A. That is correct.

Q. Would it be true that on other occasions the person who worked the dock would be a member terminal operator? A. Yes.

Q. And likewise in that case such a member terminal operator would not be expected to pay the Coast Association any part of the tonnage tax?

A. No part of his dock operation. Neither that

(Testimony of F. P. Foisie.)

nor the earloading calls for the payment of a tonnage tax.

Q. And in the instance I have put, whether of a stevedore member or a terminal operator member working the dock, or both, in such cases they would be using men employed from the hiring hall, would they not? [173]

A. Yes. In the latter case it is individual men and in the former case it is the ship's gang.

Q. Showing you Plaintiff's Exhibits 41, 42, 43 and 44, may I ask you whether in the column marked "Dock" which shows, as I understand, the number of man-hours of work performed by longshoremen on the dock, whether that represents work done by longshoremen on account of these dock operations that I have just referred to for which it is claimed that no tonnage tax is chargeable?

A. Yes, either for the stevedore or the terminal company or the steamship company doing the work on the dock.

Q. So, to put it this way, taking Plaintiff's Exhibit 42, it shows total man-hours for the Puget Sound District for the year 1944, Ship 3,554,026. Now, the work done in those man-hours would be in the unloading of tonnage for which the 21½¢ a ton was payable? A. That is my understanding.

Q. And, conversely, the 3,097,928 hours shown under the column "Dock" would be work done on the dock by longshoremen for which nothing com-

(Testimony of F. P. Foisie.)

parable to the tonnage tax is payable to the plaintiff Association? A. Yes.

Q. In discussing the benefits of this organization to the members perhaps or to the defendant—I am not clear which—you said that it occasionally gave financial backing or aid to its membership. It has never done that for the defendant?

A. I recall no instance where the defendant was involved in a tie-up which required the financial support of the Association. I am not so sure about a steamship tie-up for [174] one of these companies on a group basis. My recollection is now that I was in on an authorization to reimburse; but the statement would still be true that that would not attach to the stevedore. I know we did defend and go through court proceedings and bore the entire expense for a number of such ships.

Mr. Gose: I would like to have this marked as Defendant's Exhibit A for identification.

(Document dated February 2, 1943, and bearing signature F. P. Foisie, marked Defendant's Exhibit A for identification.)

Mr. Gose: Counsel has agreed that Defendant's Exhibit A need not be identified, that it is what it purports to be, a copy of a communication to the Budget and Finance Committee of the Waterfront Employers Association of the Pacific Coast under date of February 2, 1943, by Mr. F. P. Foisie; and may it be agreed also in connection with the identification that the original in the minute book of the

(Testimony of F. P. Foisie.)

corporation is signed by Mr. Foisie? Would you like to examine that?

Mr. Dorbin: Yes, we agree that it was signed.

Mr. Gose: I am offering this now. I would like to have the Court examine.

The Court: Exhibit A is offered. Is there any objection?

Mr. Dorbin: Yes, I am objecting.

The Court: All right.

Mr. Dobrin: We only agreed that he did not have to identify it further; but I object to it on the ground that this type of letter from the president of the Waterfront [175] Employers Association of the Pacific Coast to its Budget and Finance Committee setting forth, as it does, certain statements by Mr. Foisie, can only be admissible for impeachment of some contrary testimony that he offers here. It could not be offered to bind this corporation at all because Mr. Foisie has no power to do that. It would be admissible for impeachment but not otherwise.

Mr. Gose: If the Court please, this is a full review from the minutes—it is a full review by Mr. Foisie to the Budget and Finance Committee, taken from the minute book of the plaintiff corporation, explaining as it appeared to him then, as I apprehend, what the situation was with respect to this whole tonnage assessment proposition. I think if your Honor would examine it, you can perhaps determine its admissibility.

The Court: You are objecting on what ground?

(Testimony of F. P. Foisie.)

Mr. Dorbin: I am objecting upon the ground that a written statement of the president of this Association to its Budget and Finance Committee cannot in any way bind the plaintiff in this case in any respect by whatever is said therein, and that it can only be used for the purpose of impeaching the witness on the stand by showing that at some other time and place he said something different than he testifies to here.

The Court: In view of the objection, I think at least you should ask the witness whether or not he wrote any such letter.

Mr. Dorbin: We don't deny that he wrote it.

The Court: Well, I still suggest that to counsel.

Q. Let me show you this Defendant's Exhibit A, Mr. Foisie, [176] and ask you if you did write such communication to the Budget and Finance Committee of the plaintiff corporation on February 2, 1943?

A. It looks very familiar. I assume it is a letter I wrote. I have no reason to doubt it.

Q. Would anything that you stated in there be untrue as you then thought the facts to be?

A. I trust not. It might be an error, but I hope they were true.

Q. That represents what you thought was a statement of the situation regarding these tonnage taxes at that time?

A. A full page statement, yes.

Mr. Gose: I renew the offer. It is a statement

(Testimony of F. P. Foisie.)

at that time as to what his position was with respect to it.

The Court: Let me see it. (Examines same.)

Mr. Dobrin: I renew my objection because you have to test this letter by all the factors which were then present for the Budget and Finance Committee to consider.

The Court: Well, I will read the communication and then consider the objection.

Mr. Gose: If your Honor entertains any doubt, I would like to be heard for a minute more.

The Court: Well, I will say I entertain doubt.

Mr. Gose: If your Honor please, this is a statement by the president of this corporation not only reviewing the situation at that time but expounding certain practices that have been followed by way of practical interpretation of the resolutions that have been undertaken [177] there. This witness testified already at great length as to his familiarity with the functions, purposes and doings of the corporation; and I think, as president, it is competent to show what his statement in writing was at a preceding time. If your Honor thinks it admissible only for impeachment purposes, there are two or three features in it that I would like to employ for that purpose.

The Court: Well, on the basis of my reading this exhibit, it would seem to me that, technically, Mr. Dobrin's objection would be sound if the witness had been very strict in his direct examination. It must be remembered that the witness did cover a

(Testimony of F. P. Foisie.)

lot of ground. Some of it was solicited by questions and some of it was volunteered by a willing witness. Therefore I am somewhat doubtful as to whether under all the circumstances it is admissible; and I will solve the puzzle for the present by reserving ruling as to this Exhibit A for identification.

Mr. Gose: In that event I would like to ask another question about it, if your Honor please.

The Court: You may.

Q. Did you ever state, Mr. Foisie, at any time prior to today that the 21½c per ton assessment was, prior to the war, paid by the steamship members, with the contract stevedores as associate members undertaking to collect the same assessment from non-member steamship companies and in all cases doing so?

A. I am sorry, but that is a bit too lengthy. I got lost on it. [178]

Mr. Dobrin: If you will show him to what you refer.

Mr. Gose: It is Paragraph 3, page 1 of this Defendant's Exhibit A for identification. I didn't think I was supposed to refer to that.

The Witness: I am sorry; I didn't follow it. I thought you started off on steamship companies and switched to non-members.

Q. If you will follow me, Paragraph 3 of the document you have before you, did you ever state in writing prior to today that "The 21½c per ton assessment was, prior to the war, paid by the steam-

(Testimony of F. P. Foisie.)

ship members, with contract stevedores as associate members undertaking to collect the same assessment from non-member steamship companies and in all cases doing so''?

A. I did say that. The letter would be plainer if I said the same rate of assessment——

Q. (Interposing) In any event, as I have read it is the way you did state it?

A. That is right.

Q. And that was on the second day of February, 1943?

A. That is right.

Q. That was in a written statement to the Budget and Finance Committee of the plaintiff association?

A. That is correct.

Q. Did you further state in writing on the same date——

Mr. Dobrin: Just a minute. It is not my understanding that that is the way to ask an impeaching question. You first ask the witness a question, and if you get an answer that you are going to impeach him on, you [179] go ahead and impeach him. But this is not the way——

Mr. Gose: (Interposing) If the Court please; he has testified——

Mr. Dobrin: He is putting this in piecemeal.

The Court: You could read each sentence of this letter and ask him if he said it, and if he said he did, it is in evidence, and if he says he didn't, you could introduce it——

Mr. Gose: (Interposing) That is exactly my——

The Court: ——but unless this letter is ad-

(Testimony of F. P. Foisie.)

missible now, I am not going to make it admissible by asking him if he didn't write a certain thing in a letter. Any previous written statement could be put in evidence on that theory.

Mr. Gose: Yes, your Honor; and I conceive if he denies it, I am entitled to introduce it.

The Court: You could ask him if he wrote a letter to somebody about a purely personal matter that had no connection with this suit at all. You could ask him if he wrote it, and if he said yes, it could be read sentence by sentence. You could produce a letter and ask him concerning every sentence in the letter. So any immaterial matter on your theory could be put in evidence. I don't subscribe to your theory. Objection sustained. If you can show me where this letter is impeachment of what he has said, it may help me in determining what my ruling should be, which ruling is now reserved.

Mr. Gose: Very well. It was my thought that with respect to your statement that any letter could be put in evidence in this way, it would always be open to the [180] objection of immateriality and irrelevancy; but I will conclude this matter and rest on the Court's reservation of ruling.

The Court: It is about 4:30.

Mr. Gose: I think I am through with this witness if the Court please, but I believe he expects to be in court anyhow, and I would like to reserve the right to recall him as my own witness.

The Court: All right. The witness will be in

(Testimony of F. P. Foisie.)

court Tuesday morning at 10:00 o'clock. Now, gentlemen, it is assumed that cross examination is finished with this witness. I would hate to wager too much on that because anyone who has from Friday evening until Tuesday morning, usually thinks of a lot of questions. But assuming that counsel's idea would be followed, what is the chance of finishing this case Tuesday?

Mr. Gose: I will make a statement on that, that if Mr. Dobrin——

Mr. Dobrin: (Interposing) I am sort of the moving one. I think, so far as I know now, and I am subject to the same difficulty, that I am going to have until Tuesday morning too, but as it looks now, I have only one witness——

The Court: One more?

Mr. Dobrin: One more, and that is Mr. Boyd, on matters which ought to be very short. But I suppose I will be longer than I think. He ought to be done by both of us within an hour.

The Court: It may be that is true, but I am going under the theory that Mr. Dobrin will think of a lot of [181] questions between now and Tuesday morning.

Mr. Dobrin: I have got some redirect. I know all that is going to take some time.

The Court: I am going on the theory that Mr. Dobrin will think of a lot of questions that he doesn't have in mind now. What is the chance of your finishing by Tuesday?

(Testimony of F. P. Foisie.)

Mr. Gose: I think the Court can depend fairly well that I have completed with the cross examination of the witness, and the time I consumed with my cross examination of Mr. Foisie will be in ratio to the time consumed by counsel on the other witness and my cross examination.

The Court: What about your case in chief?

Mr. Gose: I think I can put on—I have no way of measuring Mr. Dobrin's cross examination—but I think I can put on whatever testimony I have in the space of an hour and a half.

Mr. Dobrin: May I ask this question? I anticipate, although maybe I shouldn't expect it, when the plaintiff rests the defendant may make a motion. And if so, that involves another complication because we may stand here arguing about that——

Mr. Gose: I will not undertake to obligate myself not to, but it is not my present expectation to make such a motion because I think it would be better to get everything before the Court and get it settled finally once and for all.

The Court: Well, with the plaintiff's case we are holding our own. We are a good deal like the man starting off for a destination and the mileposts say it is [182] ten miles away. After he has gone five miles it still says ten miles and the man thinks at that time he is holding his own. As I remember it, yesterday the plaintiff had just one witness. Now they have another one.

Mr. Dobrin: We have always had two.

The Court: Oh, you have had two. It was my misunderstanding.

(Further colloquy.)

(Whereupon a recess was had herein until 10:00 a.m., March 27, 1945.) [183]

Seattle, Washington

March 27, 1945, 10:00 a.m.

(All parties present as before.)

Mr. Gose: In connection with the offer of Defendant's Exhibit A, upon which you Honor reserved ruling the other afternoon, there was a good deal said at the conclusion of that session about the procedure for impeachment. I wish it understood that in making that offer the thought of impeachment was entirely secondary and still is, but the offer is made rather of a document as an official document of the plaintiff. That is one of the plaintiff's original records from its minute book. I wish to develop that thought a little further with a few questions addressed to this witness.

F. P. FOISIE,

resumed the stand for further examination and testified as follows:

Cross Examination (Resumed)

By Mr. Gose:

Q. Mr. Foisie, does the plaintiff corporation have a Budget and Finance Committee?

A. It does.

(Testimony of F. P. Foisie.)

Q. And had such a committee in February of 1943, did it not? A. And still has, yes.

Q. It did have at that time? A. It did.

Q. What was the origin of that committee, that is, how did it come into existence, do you know?

A. By appointment of the directors from the beginning of the [184] Association.

Q. Who designates the members of that committee? A. The directors.

Q. The directors. And they did so in February, 1943? A. Yes.

Q. What are the functions of that committee?

A. To develop the budget through the—beginning with the port manager's budget through the local trustees, which is sent to the treasurer of the Coast Association, and consolidates the administrative budget at San Francisco which is submitted to the Budget and Finance Committee——

Q. Does that committee have anything to do with the manner of tonnage assessments?

A. Yes.

Q. It does consider that question and make recommendations to the Board, does it not?

A. It did at the time of the one change in the rate. It does in all preliminary matters before the Board designates it and decides.

Q. That Budget and Finance Committee holds meetings which are attended by the secretary of the plaintiff corporation, does it not? A. Yes.

Q. And it is the practice of the secretary to prepare minutes of what transpires at those meetings?

(Testimony of F. P. Foisie.)

A. Yes.

Q. And such minutes are placed in the minute book of the plaintiff corporation, are they not?

A. Yes.

Mr. Gose: I will ask to have this document marked [185] Defendant's Exhibit B for identification.

The Court: There has been no other exhibit except A?

Mr. Gose: No. Counsel has agreed as to the authenticity—is the authenticity of this document agreed to?

Mr. Dobrin: Yes.

Mr. Gose: That is certain minutes taken from the minute book of the plaintiff corporation?

Mr. Dobrin: That is correct.

(Minutes of meeting of Budget & Finance Committee of Waterfront Employers Association of the Pacific Coast marked Defendant's Exhibit B for identification.)

Q. I want to show you Defendant's Exhibit B for identification and ask you if those are minutes of the meeting of the plaintiff's Budget and Finance Committee held on February 2, 1943.

A. Those are.

Mr. Gose: I wish to offer Defendant's Exhibit B for identification in evidence.

The Court: Is there any objection?

Mr. Dobrin: If the Court please, the plaintiff objects to the offer of Exhibit B, and I want to specify clearly——

(Testimony of F. P. Foisie.)

The Court: (Interposing) Just let me read it first so that I may understand it.

Mr. Dobrin: Very well.

(Court reads Exhibit B.)

Mr. Dobrin: The objection to that is similar to the objection to Exhibit A, your Honor. My position is [186] this, the Defendant in this case is bound by acts of the Board of Directors of the plaintiff; so is the plaintiff. The acts of subordinate bodies, whatever they may be, are immaterial to any issue in this case, such as the act of this committee or any other committee or any other individual, be he an officer or otherwise of the plaintiff association. It is immaterial to our position.

The Court: As I remember your objection to Exhibit A, it was, among others, that it was improper cross examination.

Mr. Dobrin: No, I didn't make that objection.

The Court: Well, I may tell counsel I am extremely doubtful of this being proper cross examination.

Mr. Gose: Oh, I have no question on that; it isn't in the character of proper cross examination, and I so stated when I put in Exhibit A, but it being the only document I wished to examine this witness about, I thought it might be more expeditious.

The Court: If it is specifically understood the objection of improper cross examination is not

(Testimony of F. P. Foisie.)

raised, I will overrule the objection to Exhibit B, and B is admitted.

(Document previously marked Defendant's Exhibit B for identification was received in evidence.)

Q. Mr. Foisie, may I call your attention to the statement appearing right toward the beginning of this Exhibit B which states, "Mr. Foisie presented under date of February 2 a letter addressed to the Budget and Finance Committee regarding the situation in the Northwest, copy of which is attached and made a part of these minutes." Is Defendant's Exhibit A the letter which is referred to [187] in the portion of Defendant's Exhibit B which I have just read? A. Yes.

Q. Can you tell us, Mr. Foisie, what the purpose of Defendant's Exhibit A, the letter to the Budget and Finance Committee, was?

A. It was to spread before the Budget and Finance Committee as comprehensive a picture as I was equal to in order to show the many phases of this situation that had developed by discussion, largely in the Northwest, and between the Northwest and San Francisco.

Q. And it was given to them in order to give them information on which they might act, was it not? A. Yes.

Q. And they did act upon such information, did they not? A. They did.

Mr. Gose: I now offer Defendant's Exhibit A

(Testimony of F. P. Foisie.)

as being definitely tied in with Defendant's Exhibit B, being information submitted by the president of the corporation to the Budget and Finance Committee as the basis for its action and upon which the witness states it did act. It completes the picture with this Exhibit B.

Mr. Dobrin: I renew the objection.

The Court: Well, counsel, it might seem logical to admit A because it is referred to in Exhibit B, but that doesn't necessarily follow. If Exhibit B, the minutes, had recited among other things that Volume 3 of the Encyclopedia Britannica had been referred to, I wouldn't feel compelled to admit Volume 3 of the Encyclopedia Britannica in evidence. I am not able as yet in reading Exhibit A for identification to find anything that is properly material there. Now, if you can point it out to me——

Mr. Gose: Very well. If the Court please——

The Court: It might change my position.

Mr. Gose: My thought has been as counsel introduced a good many documents, and I haven't objected to them, but my thought has been, your Honor, there is quite a range of issues in this case, and in a trial by this Court if some points plaintiff advances or the defendant advances do not appeal to your Honor, your Honor is not compelled to consider them in arriving at a conclusion. I understood in reserving your ruling last Friday that was probably what your Honor had in mind. There are a number of points in this Exhibit A, which was

(Testimony of F. P. Foisie.)

given, I take it, officially to the Budget and Finance Committee, which touch upon issues in this case from the standpoint at least of the defendant. Among other things, the president of the corporation here reviews the instant situation, the existing situation up and down the Coast with respect to this tonnage assessment. It is a background of the parties as they were at that time laying it before the Budget and Finance Committee of this corporation. Not only that, but it appears from another exhibit in evidence, namely one passed by the Board of Directors on February 25, 1943, which was again pursuant to action by the Budget and Finance Committee, that certain action was taken at that time, very shortly after this deadlock, toward the consideration and commencing of suit against the defendant. This ties in as an historical subject in the chain of developments in this whole matter. I think [189] that in showing what the construction was of the powers of the organization we are entitled to show what was done over a long period of time. One of the contentions, if your Honor please—and this is my ultimate reason for offering this exhibit—one of the contentions of the defendants is this, that by every practical consideration over a period of time from the organization of this corporation up until the outbreak of the war it was recognized that the taxing power of this corporation extended only to voting members. That was common ground. Certainly, as we—

The Court: (Interposing) Just a minute. I

(Testimony of F. P. Foisie.)

recognize what the witness has said. Does that letter show that?

Mr. Gose: It shows the 2½¢ per ton assessment was prior to the war paid by the steamship members, with contracting stevedores as associate members undertaking to collect the same assessment from non-member steamship companies and in all cases doing so. Now, my point is this, that as far as collecting from the non-member steamship companies is concerned, that rested entirely upon a special resolution passed in 1940, in May, with a proviso that the contract stevedores should consent to it and should endeavor to get an agreement from the non-member steamship companies to pay the tax, but prior to that time and independently of that resolution, the practice had always been, as the paragraph I have just read indicates, that the voting member steamship company was the sole party that paid the tax on its own cargo. Now, I think that particular statement is certainly [190] definite evidence of that particular fact, and it is a vital fact for our position. If your Honor should think that the chain of evidence on that subject is not sufficient or does not complete the chain, your Honor does not have to honor the particular exhibit. But I think we are entitled to have it in to give us the argument that on occasion after occasion it is said the steamship companies shall pay all tax on their own cargo and that the only obligation of the contracting stevedore is to pay on non-member steamship companies, which I may say is an entirely

(Testimony of F. P. Foisie.)

different thing from what we have got in this case. This is Army cargo which can hardly fall in the category of a non-member steamship. That is my thought; it is to develop this additional link in the chain so that we will have all the various expressions that were officially made on this question of what the responsibilities of the parties were.

Mr. Dobrin: If your Honor please, I don't think historical matters are of any particular moment in any event. This witness testified on cross examination as well as on direct examination that from the beginning of this Association the stevedores paid tonnage assessments. In 1942, irrespective of whether that had or had not been the method—in 1942 the Board of Directors of the plaintiff Association specifically provided that as to the Army and Navy and War Shipping Administration tonnage the stevedores were to pay the tonnage. That is a resolution which is in evidence; and pursuant thereto the defendant in this case paid and he is being sued for what he has not paid. Now, if on some question of debate by [191] the defendant as to what historically happened before 1942 you admit this letter, which discusses a great many things other than that, I am frank to say that on redirect examination I have got to go through this letter paragraph by paragraph and find out if in fact in every instance every remark he made there states a fact, because as your Honor will readily realize, this letter was written with only one purpose, that is, put in generally before this Budget

(Testimony of F. P. Foisie.)

Committee Mr. Foisie's review in a general way of what had occurred up to that time, but was never intended to be detailed and specific as to all factual matters such as are being raised in this case. So we would have to go through every one of those paragraphs and find out whether everything he said in there sets forth all the facts. In other words, if it is a general statement, what were the exceptions? I don't think it adds anything, what Mr. Foisie said on February 2, 1943, to this Budget Committee, which is what he understood. The history of prior years doesn't enter into this case one way or the other.

Mr. Gose: If I may answer.

The Court: (Interposing) Well, I think we have had both sides now.

Mr. Gose: There is only one point—

The Court: (Interposing) We have had much argument concerning this matter. I am afraid after you answer that counsel would wish to answer again, which he would have a right to do. As I read this Exhibit A,—I thought that I read it carefully, but I gues I must not have; it didn't seem to me that there was anything of great [192] moment in the letter that disagreed with what the witness had said. But in view of Mr. Dobrin's statement as to what he said and in view of counsel's statement as to what the letter says, it would seem to me that is probably is material. Counsel's argument has without question made Exhibit A as material as much of the matter that the plaintiff

(Testimony of F. P. Foisie.)

has put in evidence. The defendant, however, has made no objection, and it is not the Court's function to become meticulous about keeping out evidence if the parties on both sides are willing that it go in. I am inclined to admit this evidence for what it may be worth, and Exhibit A is admitted for what, if anything, it is worth. Objection of plaintiff overruled.

(Document previously marked Defendant's Exhibit A for identification was received in evidence.)

Q. On direct examination on Friday you testified something about the Army in San Francisco,— I think you said it was now contracting some of its stevedore work out to contracting stevedores. That was the substance of it, wasn't it? A. Yes.

Q. When did it start doing this contracting out to stevedores?

A. My recollection is about a year and a half ago.

Q. At the present time, however, the Army is directly employing stevedores in the Port of San Francisco, is it not?

A. It is, and it is also contracting some of its work.

Q. To what extent relatively is the Army now employing stevedores directly as compared with the amount of work that is being done with contract stevedores? [193]

Mr. Dobrin: Objected to as immaterial and improper cross examination.

(Testimony of F. P. Foisie.)

The Court: Overruled.

A. I would have to give a guess.

Q. I only want an approximation.

A. The secretary-treasurer will know better. The Army does a third of the work roughly in San Francisco. The California Stevedoring & Ballast won't do more than a fifth as much as the Army. It will do a substantial volume. I mean of Army work by California Stevedoring & Ballast it will do about a fifth.

Q. I think we are lost here somewhere. There is a total amount of Army cargo that moves through the Port of San Francisco?

A. A third of the total work of the port is by the Army, and a fifth——

Q. (Interposing) That is not exactly what I asked you. How much Army cargo is handled by longshoremen who are employed directly by the Army?

A. A third of the work of the port is handled by the Army directly. The California Stevedoring & Ballast Company in the work which it does for the Army—it does work for others—it is about a fifth as much as the Army does directly.

The Court: Is the fifth in addition to the third?

Mr. Gose: Where I am having a little trouble is on this, you say a third of the work of the port. Do you mean a third of every ton of cargo of every type that goes out for everybody in San Francisco, or are you talking about one-third of the Army cargo? [194]

(Testimony of F. P. Foisie.)

The Witness: I am sorry my fractions are not clear. There is 100% cargo of the port; the Army handles itself a third of that, the Navy a little more than a third and W. S. A. the balance.

Q. I am interested only in this third for the Army at the present moment. Directing your attention to that alone, how much of that, what percentage roughly is that Army cargo which is handled by stevedores which the Army itself employs directly rather than through a contracting stevedore?

A. Well, I would have to state it by fractions. A third of the work of the port constitutes 100% or the work done by the Army directly. The California Stevedoring & Ballast will do 20% as much as the Army does itself. I don't know how to make it plainer.

Q. I am trying to direct your attention—I think there is no question——

The Court: (Interposing) Just a minute. It would mean about 33% for the Army and approximately 7% by the company you mentioned of the work of the port.

Mr. Dobrin: Yes.

The Witness: Correct.

Q. I am not interested in what the California Stevedoring & Ballast Company is doing. All I am trying to find out is just one thing by this question that may lead to another series of questions. The Army does directly employ stevedores

(Testimony of F. P. Foisie.)

to handle its own cargo in the Port of San Francisco, does it not?

A. It does. I assume you mean longshoremen.

Q. Longshoremen. Pardon me. The Army also has some cargo [195] now handled through the Port of San Francisco by contracting stevedores?

A. That is correct.

Q. Now, what are the relative proportions of those two methods of handling Army cargo? How much does the Army handle through longshoremen directly employed by it, and how much of its work does it do through contracting stevedores?

A. The Court has stated it, I can't do it any better. That is a very good statement by the Court.

Q. I am not clear on it yet. Perhaps I am being obtuse about it. Does the Army handle 50% of its own cargo in the Port of San Francisco?

A. It handles something over 80% of its own cargo.

Q. That is what I have been trying to develop; and the remainder by contract stevedore?

A. Right.

Q. How does that 80% approximation compare with what the situation was say a year ago?

A. There is no great difference.

Q. No great difference? A. No.

Q. Is the army paying the tonnage tax on that 80% of the cargo handled by it where it directly employs longshoremen? A. Not yet.

Q. And have never done so?

A. That is correct.

(Testimony of F. P. Foisie.)

Q. With respect to Mr. Joseph Weber, whom we discussed the other day, he is, of course, not the same man as M. J. Weber who is sitting over here? [196]

A. Father and son.

Q. And Mr. Joseph Weber is now dead, as you know?

A. Yes.

Mr. Gose: I think that is all.

Redirect Examination

By Mr. Dobrin:

Q. Referring to Mr. Joseph Weber, deceased, did he attend the quarterly meetings of the Board of Directors during the time he was an associate director?

A. Always.

Mr. Gose: If I may raise a point, pardon me. I don't like to interrupt, but I don't think the words "associate director" are strictly correct.

Mr. Dobrin: You used it, and I am just using it.

Mr. Gose: I think the by-laws refer to the person as a representative.

Mr. Dobrin: He was an ex officio member of the Board of Directors.

Q. Is that correct?

A. That is correct.

Q. Are the ex officio members of the Board of Directors provided for by the by-laws commonly referred to in this Association as associate directors?

A. Correct.

Q. And as an associate director, did he attend the quarterly meetings of the Board of Directors?

A. Always with, I think, only one exception; there may have been two.

(Testimony of F. P. Foisie.)

Q. Now the Board of Directors of the plaintiff Association [197] meets four times a year in what are referred to as quarterly meetings?

A. Yes.

Q. One of those is an annual meeting?

A. Yes.

Q. And at those quarterly meetings do these associate directors attend? A. They do.

Q. As a matter of practice, in these associate meetings do the associate directors make motions?

A. Yes.

Q. Do they vote? A. Yes.

Q. And have they always done so from the beginning of the Association up to and including the present time?

A. I recall one exception.

Q. And what was that exception?

A. There was a difference of opinion with regard to the rate of increase to be paid walking bosses. The Seattle ex officio directors wanted to increase the rate beyond that of the rest of the Coast, one of the directors, George Albin, got up and asked if the associate directors had the right to vote, and I told him that I regretted he asked the question because we never raised the issue, but since he did ask the question, I was obliged to tell him they didn't have the right to vote.

Q. Now, at any time in meetings of the Board of Directors and in any business transacted by the Board of Directors since the beginning of this Association, would the question of whether an associate

(Testimony of F. P. Foisie.)

director had a right to vote or [198] didn't have a right to vote affect any action which has ever been taken by the directors?

Mr. Gose: Oh, I will have to object to that question, what the action of the Board of Directors would have been is something within their knowledge and not within the knowledge of this witness. That would call for a conclusion very obviously.

Mr. Dobrin: No, it doesn't call for a conclusion at all.

Mr. Gose: There are 17 members of the Board of Directors and this witness can't sit here and tell us what would determine the decision of those 17 members and each and every one.

Mr. Dobrin: He can tell us whether there was ever a division in the Board in which the question as to whether an associate member had a vote or didn't have a vote would have made any difference. That is a mathematical calculation, and he knows whether it ever occurred, and he can testify to it.

The Court: Let us hear the question.

(Question read.)

The Court: Well, I think that before this question is proper over objection, that there must be some foundation laid as to what knowledge he has, what investigation he had made of the votes.

Q. Have you attended all meetings of the Board of Directors of this Association from its inception?

A. I am sure I have since I became president with one exception when I was in the East.

Q. And you became president when? [199]

A. January, 1939.

(Testimony of F. P. Foisie.)

Q. Since January, 1939 has there ever been a meeting of the Board of Directors in which there was a division among the Board in which the question as to whether or not an associate member of the Board had a vote would have made any difference in the final result of action taken?

Mr. Gose: I renew my objection to that.

The Court: I will say again I don't think he has complied with any foundation. Just the fact that he was present there over a period of six years wouldn't prove anything.

Mr. Dobrin: Well, maybe I misunderstood your Honor.

Q. You presided at all meetings of the Board of Directors, did you? A. I did.

Q. And you put all the motions made to the Board? A. Yes, I did.

Q. And you called for all votes of the Board?

A. I did.

Q. Has there ever been since you became president of the Association——

The Court: Are you going to object?

Mr. Gose: He can ask if he presides at all meetings of the Board. I haven't heard what the next question is.

The Court: I am sorry. Finish the question.

Q. Has there ever been any occasion where you have put a motion to the Board of Directors where the fact that an associate member did or didn't have a vote would have [200] changed the result of a vote?

(Testimony of F. P. Foisie.)

Mr. Gose: Yes, I renew my objection to that.

The Court: Objection sustained. Counsel, I have sat in many meeting, sometimes as a presiding officer. Unless I made a careful analysis, I wouldn't be able to tell over a period of six years whether the elimination of one class of voters would or would not have affected the result. Now, you are showing he was present and presided at all but one meeting. It is a rare president who over six years can tell whether, if a few votes had been one way or the other, would have changed the results——

Mr. Dobrin: I think you are drawing on your own experience rather than the witness'.

The Court: I am not saying he can't but until he says he has analyzed these votes, I am not going to let him testify.

Mr. Dobrin: Maybe I haven't gone sufficiently far.

Q. Have you examined and considered all actions taken by the Board of Directors since you have been president of that Association for the purpose of determining the question as to whether or not if associate members of the Board had been entitled legally to cast votes, it would have made any difference in the result of any action taken by the Board? Now, that calls for a yes or no answer.

A. No.

Q. You have never made such an examination?

A. Not in the sense in which I understand your

(Testimony of F. P. Foisie.)

question. I can explain it, but I can't give a yes or no answer.

Q. Well, then will you explain it please?

A. We take decisions on acclamation. We don't poll the [201] directors. If there is a sharp cleavage on any issue, we invariably defer action because no voluntary association can proceed on a sharp division. So that if there is even a substantial body opposed, we quite invariably defer further action, further reconsideration before final action is taken. That is one phase of the answer. There are collateral issues——

Q. Well, has there ever been an occasion other than the one to which you have referred where the directors have not cast their vote by the acclamation that you referred to in meetings of the Board of Directors?

Mr. Gose: If the Court please, I object to that. The evidence already shows that associate directors have no legal power to vote.

The Court: Well, he may state whether they have voted by acclamation. That objection is overruled.

A. I have no recollection of a single vote being taken except by acclamation. I have only that one instance in mind, and it stands out sharply because it was a sharp division where ex officio members didn't vote one way or the other.

Q. But in every other instance they did vote one way or the other?

(Testimony of F. P. Foisie.)

A. That is to my reasonably clear recollection, yes.

Q. Since the beginning of your presidency of the Association? A. Yes.

Q. And I understood your testimony to be that if there were a division in the Board, any substantial division on any action, it is the practice of the Board to take no action?

A. Yes, that is well established.

Q. When you referred to that division did you include in that [202] a division in so far as it comprises likewise the associate directors?

A. Yes.

Q. Has there ever been a time other than the one occasion to which you referred where associate directors have in any way recorded any dissent from actions taken by the Board? A. Yes.

Q. In what other instances?

A. In the case of the ship clerks. We call them checkers in Seattle. There was a difference of opinion.

The Court: That was concerning ship clerks?

The Witness: Ship clerks or checkers, as we call them here. They are called variously. There was a division, and it was only a minority division and action proceeded, but there was a recorded dissent.

Q. What did that involve?

A. The matter of rate of pay to be higher here than the rest of the Coast, and all the other ports were opposed.

(Testimony of F. P. Foisie.)

Q. And the associate directors representing the local Waterfront Employers of Washington recorded their dissent, is that what you referred to?

A. Yes. I ought to recollect more because there has been a good many meetings. There are perhaps 24 meetings to keep in mind. Those are the two outstanding illustrations. They came in the one meeting.

Q. I think I asked you whether or not associate members put motions. Do they also second motions?

A. Yes.

Mr. Gose: Just a minute. I don't see the [203] materiality. It is clear from the by-laws of the organization that there is no voting power and no legal standing, and I think the practice under the circumstances is of little moment. The only importance of the point at all is that the steamship companies or voting members—they are the same thing—have the exclusive power of running the organization. The fact that they permit associate members at times to participate on some basis does not alter the fact that when any important issue comes up, the only important power rests in the voting members.

The Court: Well, this goes to my right to hear the witness testify. The Court has a right to hear, I think, what this witness says, and then the Court may agree with you or disagree with you afterwards as to what should be done with the testimony once given. Objection overruled.

Q. Do associate members participate in discus-

sions on all propositions placed before the Board of Directors? A. Oh, yes.

Q. When a vote is called for do they participate in the vote? A. Yes.

Q. If they should record a dissent to any action taken, is that dissent recorded?

A. It is Mr. Boyd's practice to record a dissent.

Q. You were asked by counsel whether or not the defendant in this case would be required to employ union labor in connection with the conduct of its business, and I wasn't quite clear as to your answer. I would like to ask you this question, as long as this defendant is a party to the [204] labor agreements of the Coast Association and the local association, is it your testimony that they would have to comply with the different provisions of those agreements?

A. Yes, obviously, obviously.

Q. If and when the defendant is no longer a party to such a labor agreement, are you expressing or did you express an opinion as to what it would then either factually or legally be obligated to do?

A. No.

Q. Is it your testimony that once it is relieved from its obligation under those labor contracts, it must thereafter employ Union labor in the conduct of its longshore-business? A. No.

Q. Is it your testimony that they would have to employ longshoremen from the particular union with which the present contract now exists once they are relieved from the obligation to the contract? A. No.

(Testimony of F. P. Foisie.)

Q. Under those circumstances would the defendant be at liberty to proceed as it is advised?

A. I am not a lawyer, but that is my knowledge, that they would be free under the National Labor Relations Act to do so.

Q. Mr. M. G. Ringenberg's name has been mentioned, and I think the testimony shows he is District Manager of the Coast Association stationed at Seattle.

A. Yes.

Q. Where is Mr. Ringenberg now?

A. Providence Hospital. [205]

The Court: What?

The Witness: Providence Hospital.

Q. Is he in such a condition that he is unable to attend this trial?

A. Yes.

Q. Reference has been made to the fees paid to representatives of the Coast Association on the Pacific Coast Maritime Industry Board, and I think your testimony was that fees were paid to such representative?

A. Yes.

Q. What becomes of those fees?

A. Those go into the Association. They don't personally benefit.

Q. Inquiry was made as to whether or not there are terminal operators who do stevedoring work, that is to say, the loading and discharging of cargo. Are there members of this Association who are terminal operators and who, in addition to their business as terminal operators, are also engaged in the stevedoring business of loading and discharging cargo?

A. Yes.

(Testimony of F. P. Foisie.)

Q. Is that true in all ports?

A. It is true in San Pedro and San Diego; it is true in San Francisco. I don't know of any instances in Portland or Seattle.

Q. So far as this Association is concerend, there is no objection legally or factually to a member changing its business from that of a terminal operator to that of a stevedore or to a ship owner or any one or more divisions of this same subject?

A. None whatsoever.

Q. Are there shipping companies who in addition to being engaged in the transportation of cargo by vessels are also engaged in the business of acting as stevedores in loading and discharging cargo?

A. Yes.

Q. And who are likewise engaged in the business of being terminal operators?

A. Oh, yes.

Q. Is there any objection from the standpoint of this Association to a stevedore, who loads and discharges cargo, assuming the function of being a terminal operator?

A. None whatever.

Q. Or being a ship operator?

A. None whatsoever.

Q. Do the members of this Association change from time to time and year to year?

A. Frequently.

Q. A terminal operator today may tomorrow be a stevedore?

A. That is correct.

(Testimony of F. P. Foisie.)

Q. A ship owner who today doesn't act as stevedore may tomorrow act as a stevedore?

A. Yes.

Q. And has that privilege gone on from the beginning of this Association?

A. Yes. I made a mistake in one of my earlier answers.

Q. All right. If you wish to correct it, you may.

A. I believe Chris Querin, a terminal operator, has recently formed a stevedore company.

Q. In what port? [207] A. Here.

Q. In Seattle? A. Yes.

Q. I show you Plaintiff's Exhibit 11, and I would like to have you glance through that so that you will have the subject matter in mind.

A. (Witness does so.)

Q. Referring to Plaintiff's Exhibit 11, you testified in response to a question on cross examination that the 4c per man hour assessment is levied against non-members of the plaintiff Association. I will ask you whether or not if such non-member of plaintiff Association is a member of one or more of the local associations, whether that tonnage assessment is levied,—whether that non-member assessment is levied and collected.

A. It is not.

The Court: If a non-member of the plaintiff association is a member of the local port association, the 4c assessment is not collected?

The Witness: Yes.

The Court: All right.

(Testimony of F. P. Foisie.)

Q. Is it correct then to put it this way, that the 4c non-member assessment is collected against only those who are non-members of either the Coast Association or the local association?

A. That is correct.

Q. And has that been true from the beginning of the non-member assessment?

A. It has been true, yes, since 1937.

The Court: We will take our recess at this time. [208]

(Recess.)

Q. Going back for one moment, Mr. Foisie, if a company whose primary function is that of a terminal operator acts as a stevedore and loads and discharges cargo, does it pay the tonnage assessment?

Mr. Gose: Do you know?

Mr. Dobrin: I asked him does it.

Q. When a company whose primary function is that of a shipping company acts as a stevedore and loads and discharges cargo, does it pay the tonnage assessment? A. It does.

Q. Irrespective of what the company's primary or secondary function is, when it loads and discharges cargo it pays the tonnage assessments?

A. It does.

Q. I call your attention to Exhibit 32, which is the minutes of the joint meeting of the Committee of Seattle and San Francisco representatives regarding assessments.

The Court: Seattle and San Francisco?

(Testimony of F. P. Foisie.)

Mr. Dobrin: Seattle and San Francisco committees, which title is a little inappropriate because it also includes the Portland committee.

Q. And I call your attention to Plaintiff's Exhibit 33, being minutes of meeting of the Board of Directors which followed the meeting described in Exhibit 32. At the meeting of the Board of Directors on May 27, 1943—and, by the way, I would like to have the original. Will you turn to the original of those documents in the minute book?

A. (Witness does so.) [209]

Q. At the meeting of the Board of Directors of May 27, 1943, recorded in Exhibit 33, was the proposal of the representatives of the San Francisco, Seattle and Portland groups, which appears in Exhibit 32, presented to the Board of Directors?

Mr. Gose: Aren't the minutes the best evidence of that, counsel?

Mr. Dobrin: It is preliminary.

The Court: Wasn't this all gone through on direct? It seems to me much of your redirect is repetition.

Mr. Dobrin: Maybe. I can get at it more directly.

Q. Will you please state whether or not Mr. M. J. Weber of the defendant company was present at the meeting of the Board of Directors of May 27, 1943, recorded in Exhibit 33—

Mr. Gose: Doesn't the exhibit itself show the persons present?

(Testimony of F. P. Foisie.)

Mr. Dobrin: It does. Do you agree he was there?

Mr. Gose: Yes.

Mr. Dobrin: All right.

Q. Did Mr. Weber during the course of that meeting at any time object to the submission of the Board of Directors of a proposal which was adopted as shown in Exhibit 32?

A. He did not.

The Court: My recollection is that this identical question was asked on direct.

Mr. Dobrin: I don't think I did.

Q. Mr. Foisie, you were asked about whether or not cargo was handled in a so-called split fashion in Seattle. What did you understand to be meant by that question? [210]

A. Where two different employers divide the work at ship's sling, one loading and discharging aboard ship and the other unloading or loading from ship's side, where the cargo is worked at ship's side.

Q. Is there anything peculiar about such operations in the Port of Seattle in that respect?

A. There is not.

Q. Does that same method of operation take place in every other port?

A. Yes, but not to the same extent.

Q. You mean in quantity? A. Yes.

Q. In connection with the actions of the Board of Directors of the plaintiff Association, what reports are made to its members of its actions?

(Testimony of F. P. Foisie.)

Mr. Gose: What has this got to do with redirect? I will object as improper redirect. I recall nothing about reports to the membership.

Mr. Dobrin: You introduced in evidence the resolution——

Mr. Gose: (Interposing) Not the reports to the membership.

Mr. Dobrin: I want to show what is done with these things.

The Court: Let me hear the question.

(Question read.)

The Court: Objection sustained.

Mr. Dobrin: I would like to ask the privilege of asking the question on direct examination——

Mr. Gose: I will not object. [211]

The Court: What?

Mr. Dobrin: If he wishes to object to it as not redirect, I would like to put him on in direct.

The Court: All right.

Direct Examination

A. The directors are given oral reports at all meetings; frequently also written reports at such meetings so that they may have them to read and study in front of them. The treasurer has a series of reports which he is better qualified to develop. The reports of committees are usually submitted in writing to the directors.

Q. Now, what reports to the membership are given of the actions of the Board of Directors?

A. The reports of the directors of actions of

(Testimony of F. P. Foisie.)

the directors to the members are primarily through Port Association meetings, or for the most part. Sometimes they are supplemented by written reports, given largely by the directors who return from the quarterly meetings. Then all actions taken by the directors on special subjects are sent by letter to all of the Coast membership. The secretary-treasurer sends most of those; I send some.

Q. And do you yourself attend meetings of the local associations and report actions of the Coast Association in various matters?

A. Yes, but, of course, only a part of the meetings.

Mr. Dobrin: I think that is all. I have one or two questions or redirect.

The Court: Are you now resuming on redirect?

Mr. Dobrin: Yes, your Honor.

Redirect Examination

Q. You have stated, Mr. Foisie, in cross examination that the California Stevedoring & Ballast Company acts as a contract stevedore for Army work in San Francisco? A. Yes.

Q. Are there any other stevedores or members of this Association who now have contracts for the loading and discharge of Army cargo in San Francisco?

A. Yes, effective April 1—I made a mistake on the previous answer—there were occasional other Army jobs done under a master contract, but they

(Testimony of F. P. Foisie.)

were so small I didn't include them along with the California Stevedoring & Ballast; but these two companies—and I didn't mention them because the question, as I understood it, was what other company is doing work.

Q. My question is what other companies have contracts with the Army for loading and discharging of cargo in San Francisco.

A. All stevedoring companies have such contracts and have had, but now two more are going to give the same type of operation that the California Stevedoring & Ballast has.

Q. What is the announced and expressed program of the Army for the handling of cargo in San Francisco for the future?

A. If and as work performed by California Stevedoring & Ballast and the next two companies concerned succeeds, all of the work will be turned over to contract stevedores.

Q. Now, prior to the war were Army vessels loaded and discharged by members of this Association?

A. Occasionally. Are you speaking of San Francisco?

Q. Yes. A. Yes.

Q. You do not have reference to those incidental movements in your answer? [213] A. No.

Q. And I think your testimony was that on all such cargo before the war the stevedore loading and/or discharging the cargo paid the tonnage assessment?

(Testimony of F. P. Foisie.)

A. There and everywhere else.

Q. Now, does the Army load and discharge cargo in other ports other than San Francisco through contract stevedores?

A. Everywhere else.

The Court: Except San Francisco? The Army hires stevedores?

Mr. Dobrin: To load and discharge cargo.

The Witness: Yes.

Q. And does it do so under contracts with the members of this Association as contracting stevedores? A. Yes, sir.

Q. And that is true in every port on the Pacific Coast?

A. It is. Excuse me. The Army doesn't load in every port, some small port, but where it is done, it is done by contracting stevedores.

Q. Do the contracting stevedores who load and discharge cargo for the Army in all ports with the exception of the defendant in this case for 1943 and 1944 pay the tonnage assessment?

A. There are two other exceptions in out ports here, one certainly and maybe two exceptions.

Q. And the one that you referred to is at Mukilteo? A. Yes.

Q. Does the United States Navy—

The Court: (Interposing) What is the Mukilteo exception? [214]

The Witness: It is an Everett stevedoring company that handles explosives at Mukilteo under

(Testimony of F. P. Foisie.)

contract with the Army. It is delinquent from our point of view.

Q. Does the United States Navy load and discharge cargo in all ports on the Pacific Coast?

A. There may be some small ports where it doesn't, but generally speaking it does in all ports.

Q. Does it do so under contract with contracting stevedores members of the plaintiff Association?

A. All of its work is so contracted.

Q. Is the tonnage assessment paid on all such cargo loaded and discharged by the stevedore loading and discharging the cargo?

A. Yes.

Q. Does that include the Port of Seattle?

A. It does.

Q. Do the contract stevedores up and down the Pacific Coast who load and discharge cargo for the United States Navy pay to the plaintiff Association the tonnage assessment?

A. Yes, without exception.

Q. And when you say "without exception" that includes all ports in the State of Washington including Seattle?

A. It does.

Q. Does the United States Navy, in addition to loading and discharging cargo through the Army and the Navy, also load and discharge cargo through the War Shipping Administration at all ports on the Pacific Coast?

A. Yes.

Q. Is such loading and discharging done through contract stevedore members of the plaintiff Association? [215]

A. That may need clarification; either contract stevedores or those who do contract stevedoring.

(Testimony of F. P. Foisie.)

That may be a steamship or terminal company, but doing contracting in the broader sense.

Q. And your answer in reference to this last question applies to the previous questions?

A. Yes.

Q. Do all members of the Association who load and discharge for the United States through the War Shipping Administration pay the tonnage assessment to the plaintiff Association?

A. All.

Q. Without exception?

A. Yes. I want to qualify that. I am not just sure about that Everett stevedore company. Mr. Boyd may give a better answer. I don't know, but if there is any exception, that is it.

Q. You were asked the question as to whether or not the Army has paid to the plaintiff Association the tonnage assessment on work which it does for itself in the Port of San Francisco, and your answer, as I understood it, was no.

A. If I understood the question correctly, yes.

Q. Now just explain to us how the Army came into the picture in San Francisco in loading and discharging cargo with its own employees.

A. Fort Mason has from time immemorial been a quartermaster station. There have been certain troop transport departures from Fort Mason to the Philippines for many years. The Army did the work of cargo loading in its own transport ships. As the war approached, naturally, they took [216] on more ships; with the nucleus of their organiza-

(Testimony of F. P. Foisie.)

tion, they extended their own work. As the work grew and grew and grew, they kept on doing it because they had built up a staff to carry on the work. Some of its work was let out by contracts, but it didn't increase in proportion to the increased work which the Army did. It is the one port in the country where they have continued to do it until latterly.

Q. What effect did this action of the Army have so far as the plaintiff Association was concerned—what facilities of the plaintiff Association, if any, do they use?

A. They used first and primarily the supply of men experienced in the accident prevention service, which was used to train their staffs and to give them the benefit of our experience. They abide by the contract though not parties to it because they cannot be parties to it. But they abide by it as though they were parties to the labor contracts, not one but several. They abide by an arbitrator's decision or a settlement of a dispute. In all ports they go along as though they were private employers under the contracts, but they are not bound. They pay separately. I should explain they pay the long-shoremen separately.

Q. In other words, they don't pay through the central pay office established in San Francisco?

A. They do happen to use the same facilities, but they write a separate check and distribute it with their own tellers.

Q. Do they participate in disputes under the

(Testimony of F. P. Foisie.)

labor contracts by way of the Labor Relations Committee and arbitrations and so forth?

A. They do on the sidelines. That is, they may appear in [217] case of a protest on pilferage or a matter in dispute, but always with the understanding that they reserve the right to be wholly independent.

Q. Have any discussions been had with the Army with reference to paying a fair amount for the use of such facilities of the plaintiff Association as they use?

A. Many over three years since their work became a substantial volume.

Q. How do they obtain men from the hiring hall in San Francisco?

A. Just the same way as any other employer would, by placing orders with the dispatchers, but checking in with the Navy and War Shipping Administration through the allocation committee, and when they decide between them as to the relative needs of the three services, they place their orders directly with the dispatcher as though they were a private employer.

Q. Now, you say there have been numerous discussions with the Army for the purpose of determining upon some compensation to the plaintiff Association for the use of its facilities.

A. Yes, even to the point of drawing contracts, several of them.

Q. What is the present status of those negotiations between the plaintiff Association and the

(Testimony of F. P. Foisie.)

Army with reference to the plaintiff receiving compensation?

A. The officials in Washington with whom I conferred on this within the month and the officials in San Francisco with whom I have been in contact since that time all give me reason to believe—though after three years I have come to some doubt—that they will be paying shortly to us. [218] There is one more technical hurdle to get over, and they expect that they will get over it.

Q. What is their position as to the compensation that they should pay to the plaintiff Association?

A. They claim that legally they cannot pay on any basis other than a lump sum, and they indicate through the years they want to do the fair thing, but declare they have difficulty legally in meeting some of their statutory regulations and have had trouble drawing the kind of a contract that will be sound. They therefore have agreed with us on a sum, and it is drafted on a lump sum monthly payment.

Q. What is the position of the Association as to what it will expect the Army to do with reference to the payment of compensation?

A. The Association has always felt that it was carrying the Army. The Army officials have declared that they regarded that they were being carried. They wanted to do the right thing but they have their own legal problems to overcome. They have raised the question as to what we would do

(Testimony of F. P. Foisie.)

in case they didn't pay. The directors authorized me to tell them that they would get men whether they paid a dime or any amount of money or nothing at all that we would do it for nothing, if necessary, as long as we had funds to carry on the operations, but we frankly expected them to hold up their end.

Q. And that is the position in which the matter presently rests?

A. That is correct, and that has been the case for three years. [219]

Q. Now, this refers only to work done by the Army with their own employees and not through contracting stevedores?

A. That is correct.

Q. Now, I wish you would refer to what has been admitted in evidence here as Defendant's Exhibit A, being the letter of February 2, 1943 from yourself to the Budget Committee.

The Court: Now, counsel, you have indicated that you are going to spend a great deal of time on this letter. If that is so, I would suggest that in the interest of time saving you let Mr. Foisie be recalled after lunch and let him look over the letter meanwhile.

Mr. Dobrin: We have done it very carefully, your Honor.

The Court: You have?

Mr. Dobrin: Yes.

The Court: All right.

(Testimony of F. P. Foisie.)

Mr. Dobrin: In anticipation that we might arrive where we are.

Q. Do you have the letter before you?

A. I have.

Q. Do the members of the Budget Committee necessarily come from the representatives of the voting members?

A. No, but generally they do.

Q. On the Budget Committee as it existed on February 2, 1943 were there non-voting members?

A. One.

Q. And that was who? A. Thomas James.

Q. And for what company?

A. The Associated Banning, one of two companies now doing [220] Army work.

Q. That is a stevedoring company?

A. Associated Banning Stevedore Company.

Q. In San Francisco?

A. And in Los Angeles.

Q. Do the members on the Budget Committee always come from San Francisco? A. No.

Q. Where else do they come from?

A. We had Mr. Lintner from Seattle from the American Mail Line.

Mr. Gose: I don't find him.

Mr. Dobrin: He is not here. Proceed. There is no objection.

Mr. Gose: I want to make an objection.

The Court: He is making a statement as to general practice.

(Testimony of F. P. Foisie.)

Mr. Gose: I thought it was addressed to this exhibit.

Mr. Dobrin: You misunderstood the question.

Q. Who else from Seattle have been on the Budget Committee if you recall?

A. Mr. Middleton when he was a representative of Dodwell Company.

Q. I call your attention to Paragraph 3 of this letter on page 1 and ask you whether the statement contained therein down to and including the semi-colon is correct or was correct on February 2, 1943?

A. In general that is the case, but it is not latterly correct.

Q. And did you explain in your direct examination what is [221] latterly correct?

A. I did.

Q. So that we will have it right at this same place, what is the fact latterly?

A. The fact is that there has been and are other companies, stevedore and terminal, who have paid the 21½c tonnage tax and are doing it now and have done it throughout for member companies where member steamship companies were also involved.

Q. Was that particular subject of any importance in the matter that you were engaged in presenting to the Budget Committee?

A. None whatsoever. There is no dispute; where there is a steamship member and a stevedore member, that is a matter of their contractual relations,

(Testimony of F. P. Foisie.)

with the normal result that the steamship companies pay direct.

Q. And that was understood by the Budget Committee?

A. It was. There is no issue of that sort.

Q. Referring to Paragraph 4 on page 1 of Exhibit A, reading, "In all ports on this Coast"—first, where did you get that information?

A. Let me read it.

Q. (Reading) "In all ports on this Coast but Washington, the stevedores allowed in their contracts for the Association assessment and are remitting regularly and in full." Where did you get that information and to what subject does that pertain?

A. In the general discussions of this subject the information which came to us, including from the Seattle representatives, was that everywhere else on the Coast the procedure [222] was invariably followed of seeing to it that in their working contracts as in their business contracts, provision was made and that in the State of Washington many of the companies did, but not all of them.

Q. Were you advised as to why some of them did not?

A. There was much discussion, but it centered on the fact, at least as the information which only comes to me through discussion, not in the sense of being parties to any of these contracts that for competitive purposes in some instances it was left out.

(Testimony of F. P. Foisie.)

Q. And when you say for competitive purposes, do you mean so as to reduce the bid?

A. That is right.

Q. Except as that information contained in Paragraph 4 of Exhibit A, page 1, was given to you by hearsay, that is all you know about it?

A. I am sorry to say I don't know of my own direct knowledge.

Q. Were you approaching the problems being dealt with by you at that time in this letter on that assumption?

A. Yes, sir.

Q. Referring to the last paragraph on page 1 of Exhibit A, (Reading) "In Washington ports this collection of assessments, it appears, has been carried out on all cargoes but Army." Let's stop there for a moment. Did you have in mind principally Griffiths and Sprague when you made that statement?

A. Yes.

Q. Now, have you since examined the fact as to whether or not even on February 2, 1943 Griffiths and Sprague had been paying on Army cargo?

A. I have discovered that they paid up to some time in 1942. I don't know the date.

Q. And in any event——

A. (Interposing) They did pay, and they ceased to pay, and that is what I had in mind.

Q. Is that first sentence in this letter then inaccurate?

A. It is. I merely took the information given to me in these discussions with Seattle members.

Q. Now, referring to the last sentence on page

(Testimony of F. P. Foisie.)

1 of Exhibit A which reads, "Some of the stevedores in Washington ports are delinquent on War Shipping Administration, lend-lease and commercial cargoes." Is there any such delinquency at the present time? A. None.

Q. Including the defendant in this case?

A. Correct.

Q. I call your attention to the second full paragraph on page 2 of Exhibit A, reading, "The Coast Board meeting with the stevedoring representatives declined to change the assessment policy, but concurred in the proposal to ask that companies who split the stevedoring contract by handling cargo to and from the ship in Washington ports (unlike the practice in other ports) share in the assessment." What meeting were you referring to in that paragraph?

A. I think it was the meeting of January 12. I am not sure.

Q. Now, am I correct, Mr. Foisie, that you are referring to the meeting of November 11 and November 12? Will you turn to the minutes of November 11, 1942 and November 12, 1942? [224]

A. Yes.

Q. Now, referring to the minutes of meeting of November 11, 1942, which is Exhibit 10 in this case; is that correct, your Honor, is that Exhibit 10? The minutes for November 11, 1942?

The Court: I don't have Exhibit 10.

Mr. Dobrin: Oh, 21, rather.

Q. Referring to the minutes of meeting of

(Testimony of F. P. Foisie.)

November 11, 1942, which is Exhibit 21 in this case, and the minutes of meeting of November 12, 1942, which is Exhibit 22 in this case, I will ask you whether or not those were the meetings to which you had reference in the second full paragraph of page 2 of Exhibit A to which I have called your attention.

A. Yes, the stevedore representatives, meaning primarily those from Seattle; also Portland.

Q. Have you examined those Exhibits 21 and 22? A. I have.

Q. Will you please state whether or not the second full paragraph of your letter of Exhibit A, page 2, is a correct statement of what occurred at those meetings?

A. No, it is somewhat in error.

Q. Well, specifically, did the Board of Directors at the meeting of November 12, either the meeting of November 11 or November 12 or 1942, shown in Exhibits 21 and 22, concur in any proposal to ask that companies who split the stevedore contract by handling cargo to and from the ship in Washington ports, share in the assessment?

Mr. Gose: I am going to object to this simply because it is an unnecessary consumption of time. We have [225] in evidence Plaintiff's Exhibits 21 and 22 and Defendant's Exhibit A. All the witness is doing is testify to some discrepancies between the two.

The Court: He may testify there is some discrepancy if he wishes.

(Testimony of F. P. Foisie.)

Mr. Dobrin: Yes. You have offered the statement. He has got to explain it.

The Court: Objection overruled.

Q. All that the Board did was to refer the proposal from Seattle back to the Seattle members and the committee for further study and further reports back. I think my language was not only in error but clumsy. The intent of the Board was to do anything possible to satisfy or appease local desire in this matter.

In this same paragraph in parenthesis are the words "unlike the practice in other ports." Do you see what I refer to? A. I do.

Q. Is that or is that not an erroneous statement?

A. As I said before it is erroneous to the point that there is the same practice in all ports, but it is more commonly the practice here than in other ports.

Q. Referring to Item numbered 1 on page 2 of Exhibit A, you have used the expression "stevedoring work on the dock." Is that a correct expression or description of the work?

A. Well, it is one of the loose terms. All stevedoring attaches to the ship.

Q. And to what function?

A. Loading and discharging. Handling is the customary term on the dock. [226]

Q. And so in Item 1 you referred to assessment of companies who do handling work on the dock?

A. Well, I don't know how to explain it.

(Testimony of F. P. Foisie.)

Q. You may explain it any way you wish.

A. Well, the question arose here in connection with the terminal operators who handle to ship's side and the stevedores engaged in terminal work. So the issue presented there was rather a division primarily between two stevedoring companies, one who loaded and discharged cargo into the vessel and one who unload and handled cargo to the ship's side.

Q. In other words, the second stevedore who did the handling on the dock was doing the terminal work?

A. That is right.

Q. Now, referring to the paragraph on page 2 of Exhibit A which begins with the words "The Washington trustees," to whom were you making reference?

A. The Board of Trustees of the Waterfront Employers of Washington.

The Court: "The Washington trustees" refers to?

The Witness: The Board of Trustees of the Waterfront Employers of Washington.

Q. I will read you the next sentence, "The Washington trustees advocated that companies doing Army and Navy work to ship's side should share the tonnage assessment, the Coast trustees agreeing if the Seattle member companies were willing." Is that or is that not an inaccurate statement?

A. It is inaccurate to this extent, that the position of the Board, as repeatedly stated in the min-

(Testimony of F. P. Foisie.)

utes, is that they [227] would not relieve member companies who loaded and discharged cargo from the responsibility for that assessment, but they were perfectly willing to have a local arrangement if it could be entered into amicably whereby the local people should in some respect satisfactory to the local people share that cost without relieving the member from the responsibility to the Coast Association.

Q. Well, referring specifically to the words "The Coast trustees agreeing if the Seattle member companies were willing."

A. The matter was referred back to the local committee for further study to find out what they could get done among the stevedores themselves and among the terminal operators and between the two of them.

Q. Well, is the reference there to what the Coast trustees were agreeing to your conception or your interpretation of what was done as shown on Exhibits 21 and 22?

A. Well, it is in error; it doesn't state the situation as it should have been stated.

Q. Well, that is the point I want to get at. In other words, up to that time the Coast directors had taken no such action as you described?

Mr. Gosc: Just a minute. I don't wish you to lead him in that fashion.

The Court: Well, counsel will have this in mind always, that when counsel are examining their own witness, if they wish the Court to be particularly

(Testimony of F. P. Foisie.)

impressed by the answer of the witness, that counsel will avoid as far as possible making the question leading. If counsel are not very much interested in the weight, if any, the Court [228] gives to a particular answer, counsel may lead as little or much as they feel inclined. That applies to both sides.

Q. Now, referring to page 3 of Exhibit A, with the words "The salient facts on which the Washington Association proposal is based are:" Do you see that? A. Yes.

Q. Now, is the next paragraph following that a statement by you of your position or the position as you understood it of the Washington Association?

A. Not only their position, but the facts throughout that statement are entirely theirs. They were gathered here. They were gleaned from their material submitted when I was here.

Q. I read the statement, "That it is equitable for those doing cargo handling on the dock to share the burden of the tax with those who do the cargo handling on the ship, thus putting this combined operation on a basis comparable with the custom in other ports on the Coast." That is the statement to which you have just made reference?

A. That is the statement underlying the proposal advanced by the local interests. It is not my statement but my summary of their position.

Q. Is the statement of their position to the effect, "Thus putting this combined operation on a

(Testimony of F. P. Foisie.)

basis comparable with the custom in other ports on the Coast," an accurate statement of fact?

A. No, as merely a pronounced condition here but existing elsewhere.

Q. Did you subscribe to the position as to the Washington [229] Association's view as to what is equitable? A. I could not.

Q. Well, did you? A. No.

Q. The information which follows the portion of this letter which I have just read, starting with the words "Concerning the work done on docks" and going to the end of page 3, where did you get that information?

A. From Mr. Middleton and Mr. Varnell, manager of the Northwest Terminal Association, as they worked out that part of a proposal from the Washington trustees which was under consideration. It was an effort to negotiate step by step what was proposed from Seattle.

Q. Do you know anything about the accuracy of the material thus supplied?

A. Only that I knew, for instance, that the manager of the Terminal Association and Mr. Middleton pretty much knew the situation.

Q. And this was material furnished to you?

A. That is right.

Q. And you were just repeating it?

A. I was trying to present the whole picture as I could gather it to the Budget Committee.

Q. Now, referring to the first paragraph on page 4 of Exhibit A, I will ask you whether or not that

(Testimony of F. P. Foisie.)

indicates anything with reference to the question as to whether or not this proposal for a different method of assessment was solely a local issue to be locally dealt with.

A. The proposal was local and was advanced to include contributions by steamship companies no longer operating as [230] steamship operators but as agents for the government.

Q. Was that proposal referred to in this Exhibit for Coastwise application or local application or in the Washington District?

A. It was proposed first for the Coast, as I recall it, and then there was an effort to see if it could be worked out locally. It was rejected at once from the Coast as a whole.

Q. Now, is the Alaska Steamship Company, referred to in the first paragraph on page 4 of Exhibit A, a company with headquarters locally in the State of Washington? A. It is.

Q. And is the reference to its contribution on a Coast basis or on a local basis?

A. Well, it presumably would be on a Coast basis if it were not for the fact that it was an entirely local operation.

The Court: It is noon. How long do you think it will be before your redirect of this witness is finished?

Mr. Dobrin: I haven't too much more. I have practically covered everything I will ask about Exhibit A.

(Testimony of F. P. Foisie.)

The Court: This Court is recessed and this case is recessed until 2:00 o'clock.

(Whereupon, at 12:00 M, a recess was had herein until 2:00 p.m.)

Q. Mr. Foisie, please refer to the last paragraph of Exhibit A, reading "Should the Washington trustees be unable to carry out their own proposals with their members, then [231] the uniform Coast assessment policy should be re-established for Washington ports as for all others." What did you have reference to, Mr. Foisie?

A. That the proposals advanced from the Northwest, which they had not been able to develop to the point where they could carry them out, were washed up and we would in all ports operate as we had in all other ports and proceed to the collection of the delinquencies.

Q. And by that you are referring to delinquencies in tonnage assessments? A. Yes.

Q. Now, what was the purpose of this meeting of the Budget Committee and the preparation of this letter, Exhibit A, which you presented to them?

A. It was an effort on my part to develop as nearly as I could instead of a long oral statement the entire picture—and there had been much that had gone before—with an effort of my own incorporated in that picture, to suggest every step that might be considered by the Budget and Finance Committee in the direction of the proposals of the Seattle group interested. It was, frankly, my

(Testimony of F. P. Foisie.)

appeasement program to try to reconcile differences between our membership.

Q. Now, referring to minutes of meeting of the Budget and Finance Committee of February 2, 1943, which is Exhibit B, I call your attention to that portion of the exhibit which says "Following is the concensus of opinion of the Executive Committee." Is that a correct statement, or should that be of the Budget and Finance Committee?

A. It should be the Budget and Finance Committee. The [232] Executive Committee at that time was separate, but the two have since been combined in one for the expediting of our war efforts.

The Court: It should be Budget and Finance Committee?

The Witness: Yes, sir.

Q. Now, after the semi-colon in the portion to which I have just called your attention, I call your attention to the first paragraph, "The tonnage assessment of 21½c per ton on all cargo handled by them other than commercial cargo handled by member steamship companies must be met by the contracting stevedores performing the work." To what work was reference being made?

A. Army, Navy and War Shipping, but particularly Army work because that was the only source of delinquency.

Q. And what type of work by the contracting stevedores?

A. The loading and discharging of cargoes.

(Testimony of F. P. Foisie.)

Q. Now, why is the statement made that this should apply to other than commercial cargo handled for member steamship companies?

A. Because we have never had any dispute on commercial cargoes. Always, usually, the steamship companies—one or the other have paid it.

Q. When you say one or the other you mean the steamship or——

A. The steamship or his contracting stevedore. There is no issue under those circumstances.

Q. And never has been?

A. Never has been.

Q. From the standpoint of the Budget and Finance Committee, how are the Army and Navy and War Shipping Administration [233] considered? A. As non-member tonnage.

Q. Has that always been the position of the Association in its various committees and Board of Directors? A. Always.

Q. Now, I call your attention to the next paragraph stating, "The Committe has no objection to the contracting stevedores getting relief from other stevedore companies performing part of the operation from the first or last place of rest on the dock to ship's side or vice versa." When they say stevedore companies there, to whom are they referring?

A. Well, my recollection of this is that the only persons who have ever been really involved have been stevedore companies who do some dock work between ship's side and place of rest.

Q. And is that directed to that operation?

(Testimony of F. P. Foisie.)

A. Yes.

Q. To a stevedore doing that operation?

A. Yes.

Q. How have we described that operation in this hearing?

A. Handling cargo.

Q. In the next paragraph it says this: "That this Association will not obligate itself to advise the terminal operators that they must contribute to the assessment." What terminal operators does that make reference to?

A. Those terminal operators who do only dock work and who do not include any loading or discharging of cargoes.

Q. And I call your attention to the next paragraph, "That this Association does not agree that the steamship companies [234] members of the Association must be forced to voluntarily contribute a portion of the 21½c tonnage assessment." To what does that refer?

A. It refers to the proposal which had been advanced from Seattle, that the steamship companies, even though they had ceased with the coming of the war to be steamship companies as operators and had become steamship agents for Army, Navy and War Shipping—that they should contribute, without freight revenues, to such fund and from whatever agency if they were paid by the Government a part of that straight 21½c tonnage assessment.

Q. What had happened to the steamship operators on this Coast on the advent of the war?

A. All of their ships were taken over. In one

(Testimony of F. P. Foisie.)

form or another they became agents, no operators, not steamship owners. That is true today.

Q. And agents for whom?

A. Uncle Sam in one or the other of the departments of the services.

Q. You mean the United States of America?

A. Excuse me. I am sorry.

Q. All right. The United States of America?

A. Yes.

Q. I call your attention to the next paragraph of Exhibit B where it is suggested that on the next visit to Seattle you endeavor to discuss the issue with Mr. Kenneth Coleman and D. K. McDonald. Did you come to Seattle after this meeting?

A. I did.

Q. Did you discuss this matter with Kenneth Coleman? [235]

A. I could not.

Q. Did you discuss it with D. K. McDonald?

A. Yes. I am not sure that I discussed it that visit. I am not wholly sure, but I think I did.

Q. But sometime subsequent to the date of this meeting?

A. Several times.

Q. I call your attention to the next to the last paragraph of Exhibit B and ask you to state why it was suggested that either Mr. Lawrence Bogle or A. R. Lintner advise the Seattle trustees of the Coast Board's policy?

A. So as to have as much of the spirit and attitude and discussion confined to Seattle members with the least intervention of anyone from San

(Testimony of F. P. Foisie.)

Francisco, not excluding myself, whose headquarters is San Francisco.

Q. What connection with the plaintiff Association did Mr. Lawrence Bogle have at the time of this suggestion contained in Exhibit B?

A. A director from Seattle.

Q. And what position did Mr. A. R. Lintner at that time hold——

A. With the Association? A director.

Q. ——with the plaintiff Association?

A. A director.

Mr. Dobrin: That is all. You may inquire.

Recross Examination

By Mr. Gose:

Q. Mr. Foisie, I understood you to testify that if the defendant would sever its connection with both the Coast and the Local Association, it could theoretically still engage in business with non-union longshoremens on the West [236] Coast of the United States. Did you so testify?

A. Yes. I don't know that I used the word "theoretically" but I think that is a fair question, and the answer would be yes.

Q. Practically, you know it would be impossible for it to do so, don't you?

A. My guess is it would be. I have no doubt that the defendant company would be obliged to deal with this Union by certification, which has not yet taken place because the certification has been for all the members of the Association.

(Testimony of F. P. Foisie.)

Q. You know of no instances, do you, in which any waterfront employer in any of the major ports on the Pacific Coast is able to operate with non-union labor, do you?

A. Any of our members?

Q. Anyone in the Port of Seattle, member or otherwise.

A. I don't know what waterfront employers there are outside of our own membership.

Q. I say you know of no instance in which anyone is so operating?

A. I don't know of any such instance, no.

Q. You know, of course, that, as all of us do, from October '36, I believe, down to the early part of February, 1937, when there was a dispute between the Waterfront Employers and the International Longshoremen's and Warehousemen's Union, that there was no ship that went in and out of the West Coast?

A. That is my clear recollection.

Q. Do you know whether Griffiths and Sprague, the defendant in this case, is the only contracting stevedore loading [237] for the Army in this Port of Seattle?

A. It has always been my understanding that they were the sole stevedore.

Q. Now, there is one other question I think we do not have a difference on, but I want to be clear on it; on some occasions in your testimony in answer to counsel's questions in connection with the Army I understood you to make reference to the

(Testimony of F. P. Foisie.)

use by the Army and Navy of its own employees in the Port of San Francisco. If that phrase was used, what was intended by it? The longshoremen employed by the Army through the hiring hall in San Francisco?

A. On the ship they have their own civilian service employees for dock work in conjunction with the ship.

Q. But in so far as longshoremen are used, those are in on sense civilian employees of the Army on any permanent basis?

A. They are not civilian employees at all; they are longshoremen out of the hall precisely as you asked.

Q. The steamship company members of the plaintiff Association whom you state are now out of business as steamship operators but still operate as agents, are, of course, being compensated by the United States Government for the services which they render as agents?

A. They are.

Mr. Gose: I think that is all.

Mr. Dobrin: That is all.

(Witness excused.) [238]

A. BOYD

being first duly sworn testified on behalf of Plaintiff as follows:

Direct Examination

By Mr. Dobrin:

Q. State your name, please. A. A. Boyd.

Q. Where do you reside?

A. San Francisco.

Q. What is your connection with the plaintiff Association? A. Secretary-treasurer.

Q. How long have you held such position?

A. Since the inception of the corporation in 1937.

Q. And what are your duties as secretary-treasurer?

A. Keep the records, moneys and keep the minutes of the Board of Directors and all committees and act under the orders of the president and the Board of Directors and do those things that a secretary-treasurer would ordinarily do in the regular course of business.

Q. I hand you Plaintiff's Exhibit 9 and call your attention to the memorandum agreement set forth therein, and I also hand you Plaintiff's Exhibit 10, being the memorandum agreement as signed by the defendant in this case and ask you whether or not an identical memorandum of agreement was on or about May 1940 signed by the majority of the contracting stevedores of the Association. A. That is correct.

Q. I call your attention to Exhibit H, being the

(Testimony of A. Boyd.)

resolution of the Board of Directors of the plaintiff on March 12, 1941 in which appears the following——

The Court: What exhibit? [239]

Mr. Dobrin: Exhibit 14. Thank you your Honor.

Q. ——which contains among others the following statement: “* * * that the contracting stevedores be required to collect the tonnage assessment and pay the Association assessments for such cargo handled in conformity with the agreement authorized by the Board May 8, 1940.” To what agreement was reference there being made?

A. That refers to the agreement that we just identified that was signed by practically all the stevedores.

Q. And that is the one that is set forth?

A. Authorized on May 8, 1940.

Q. The one set forth in Exhibits 9 and 10?

A. Yes.

Q. And I call your attention to the further language: “* * * and signed by all of the contracting stevedore members of the several port associations on the Pacific Coast,” and I ask you whether or not that statement is correct and as to whether or not the memorandum agreement to which we have referred has been signed by all the member stevedore of the Association?

A. In checking up I find that there was one minor stevedoring company in San Francisco that did not sign the agreement. They were not in active

(Testimony of A. Boyd.)

business at the time. They have since resumed business and they have conformed in all respects.

Q. I call your attention to resolution of June 25, 1942, appearing in Plaintiff's Exhibit 17, and to this statement contained therein.

The Court: What date is that?

Mr. Dobrin: June 25, 1942. [240]

Q. (Reading) “* * * That the contracting stevedores or the steamship companies doing stevedoring of cargo for either the Army, Navy or W S A is obligated to report the tonnage so handled and pay the assessment to the Association in the same manner that non-member tonnage has been reported to the Association.” How was non-member tonnage reported to the Association?

A. It was reported on the authorized tonnage reporting blanks that have been in use ever since the beginning of the Association.

Q. I show you what has been introduced in evidence as Plaintiff's Exhibit 4 and ask you if that is the report form that non-member tonnage was reported on? A. Yes, that is it.

Q. And has Army, Navy and War Shipping Administration tonnage been reported on that same form? A. Yes, sir.

Q. Does the Association use any other form than that for the reporting of any kind of tonnage? That is the accredited form and the only one recognized for all ports? A. For all ports.

Q. And all types?

A. All types of cargo, yes, sir.

(Testimony of A. Boyd.)

(File of monthly reports of tonnage was marked Plaintiff's Exhibit No. 45 for identification.)

Q. I hand you what has been marked Plaintiff's Exhibit 45 for identification and ask you to tell us what it consists of.

A. These are certified tonnage reports, monthly tonnage reports from Griffiths and Sprague Company from December, [241] 1940 and end September 1942.

Mr. Dobrin: I offer in evidence Plaintiff's Exhibit 45.

Mr. Gose: I will enter an objection to its going into evidence. I think it has no purpose. The tonnage tax has been paid up to the end of 1942. Unless there is some proposal to show that the report is inaccurate——

Mr. Dobrin: That is not the purpose of it.

Mr. Gose: Otherwise, this controversy has narrowed down to the period from January 1, 1943 on. The volume of reports before that time casts no light on any issue in this case.

The Court: It may be they cast no light, in which event it seems to me there is no hurt. If they do cast light, they may be helpful; and the reports being Exhibit 45 are admitted. Objection overruled.

(Documents previously marked Plaintiff's Exhibit No. 45 for identification was received in evidence.)

(Testimony of A. Boyd.)

Q. Mr. Boyd, in connection with your duties are you the officer of the Coast Association who checks ships loading and discharging in the ports of the Pacific Coast to see that the tonnage assessment is paid on them?

A. It is done under my supervision, and I have done much myself.

Q. And in that way did you become acquainted with who are operating various vessels in and out of various ports on the Coast? A. Yes.

Q. Will you please look at the vessels named in the reports and tell us if any of those vessels are Army vessels, and, [242] if so, on which reports you are able to so identify them?

A. Well, there are some of them I am not sure about.

Q. Just tell us those you are sure of.

A. Well, take the Chirikoff and the St. Mihiel.

Q. Do you find Army vessels on the report for December 1940? A. Yes, sir.

Q. All right. Look at the next one.

A. And also on January 1941 and February 1941 and March 1941 and April 1941 and also on May of 1941 and June.

Q. June 1941?

A. June 1941. In July of 1941 the boats designated U. S. Army—there are a number of boats—there are about 10 of them that are shown as U. S. Army.

Q. Right on the report?

(Testimony of A. Boyd.)

A. Right on the report and so on down through to the end of these returns.

Q. Well, I wish you would go through them month by month.

A. All right. Then in August——

Q. What year?

A. 1941; it appears to be all Army; September likewise, all Army; October, 1941——

Q. What about October, 1941?

A. That is all Army; and November 1941 all Army; December 1941 all Army; January 1942 shows Army and February 1942 is Army.

The Court: All Army?

The Witness: Yes, sir. Well, there are some boats I am not really sure, but the majority of them are. They don't show on the reports that they are all Army. There may be one or two small vessels that I can't be [243] real sure about. They switch these new boats around, and we are not familiar with the names.

A. (Resuming) March 1942 shows majority as Army. And there is one report that just lists the months of April, May, June, July, August and September 1942 and shows the total amount of tonnage but doesn't show any details.

Q. In other words, the names of the vessels do not appear?

A. That is right.

Q. Do all those reports show tonnage loaded and discharged for the Army?

A. That is right.

Q. And the tonnage assessments on all of the

(Testimony of A. Boyd.)

tonnage handled by the defendant up to the end of 1942 has been paid? A. That is right.

Q. At the rate fixed in the resolutions of the Board of Directors at 2½c a ton?

A. Yes, sir.

Mr. Dobrin: Mark this as our next exhibit.

(2-page document entitled "Percentage Study of Port Expense Compared with Port Tonnage" marked Plaintiff's Exhibit No. 46 for identification.)

Mr. Dobrin: Hand that up to His Honor, please.

The Court: That has not been admitted yet?

Mr. Dobrin: No, but I was going to ask some questions about it, and I thought it would be helpful if your Honor had it.

Q. Mr. Boyd, I show you what has been marked Plaintiff's Exhibit 46 for identification, consisting of two pages marked respectively pages 1 and 2, and I wish you would look at page 1 and tell us what that exhibit purports to [244] show.

A. It is a percentage study of port expense compared with port tonnage for the calendar year 1942.

Q. What does column 1 show?

A. That shows the districts, the names of the districts.

The Court: To 1943 or through?

The Witness: No, the calendar year for 1943.

Q. Column 1 shows districts?

(Testimony of A. Boyd.)

A. Column 1 shows districts on the Pacific Coast.

Q. Take for instance, where it says Seattle, does that refer to the Port of Seattle or what?

A. That covers the Puget Sound area and all Washington ports exclusive of Washington Columbia River ports.

Q. What does the Portland district cover?

A. Portland and the Oregon Bar shores and Washington ports on the Columbia River.

Q. In other words, the State of Oregon including the Columbia River ports?

A. That is right.

Q. And the designation San Francisco includes what?

A. California north of San Pedro.

Q. And Southern California includes what?

A. Southern California includes ports south of San Pedro.

Q. What does Column 2 indicate?

A. That is the amount of money expended by the Coast Association in the several different districts during the calendar year 1943 for expenditures in which the Coast Association made payment to the several districts.

Q. Is that direct expenditures in the districts?

A. It is spent in the district and reimbursed by the Coast. [245]

Q. I mean the expenditures are made in the——

A. In the several districts, yes, sir.

Q. And what items does that cover?

(Testimony of A. Boyd.)

A. That covers the general administrative costs in each district, hiring hall expense and safety expense. Those are the three broad divisions.

Q. What does Column 3 show?

A. Column 3 shows the percentage that each one of the amounts in Column 2 bears to 100%.

Q. What does Column 4 show?

A. Column 4 is the tonnage reported in the several districts during the calendar year 1943.

Q. What tonnage?

A. Tonnage handled by the member companies and paid for to the Coast Association.

Q. Handled in what way?

A. Loaded and discharged from ships.

Q. What does Column 5 show?

A. That shows the percentage the tonnage in Column 4 bears to 100%.

Q. In Column 2 I note an asterisk which contains a note at the bottom of the exhibit. What is shown by that asterisk and the note?

A. It notes that there is excluded from the figures in Column 2 the head office expense, which includes safety, administrative, legal and arbitration, which are not included in the figures set forth in Column 2.

Q. In other words, the amount shown in the footnote and the amount shown in Column 2 aggregate the total expenditures of the Coast Association? [246]

A. That is correct.

Q. And the amount shown in the single asterisk

(Testimony of A. Boyd.)

is the amount which is incurred at the head office of the Association? A. That is correct.

Q. Does that amount incurred at the head office of the Association include services performed for all the districts?

A. Oh, yes. To get the true expenses of the districts, it should be prorated.

Q. Now, in Column 4 I notice a double asterisk in the line for Seattle and a note at the bottom. What does the double asterisk note indicate?

A. It indicates by adding 1,389,161 tons shown there to the tonnage shown in Column 4 would give a different percentage in Column 5.

Q. Now, does page 2 of Exhibit 46 disclose the same information that you have described for the year 1944? A. That is right.

Q. That is the calendar year 1944?

A. The calendar year 1944.

Mr. Dobrin: I offer Exhibit 46 in evidence.

Mr. Gose: If the Court please, I would like to record an objection against this exhibit, my reason being that it purports to show a variety of expenditures in the various ports of the Pacific Coast as compared with the volume of shipping operations in those ports. I don't know of any conceivable theory upon which the right to levy dues is asserted, even by the plaintiff, based upon proportionate distribution between the different ports. As I understand, the plaintiff asserts in this case that [247] they have a right to levy $2\frac{1}{2}\%$ tonnage tax on every ton of cargo handled by a member moving through

(Testimony of A. Boyd.)

West Coast ports, and I can't conceive any connection between that contention and this exhibit, which purports to show some proportionate distribution in the volume of operation between different ports. I just don't see how it can bear on any issue.

The Court: Objection overruled. Exhibit 46 admitted.

(Document previously marked Plaintiff's Exhibit No. 46 for identification was received in evidence.)

Q. How many shipping members are there of the plaintiff Association at the present time?

A. At the present time there are 84.

Q. How many associate members are there of the plaintiff Association at the present time?

A. At the present time 47.

Q. How do those figures compare relatively with the membership of the Association from the beginning?

A. They are a little below, maybe 10%, shipping members. The associate members is up a few. There was a drop off of shipping members right after December 1, 1941.

Q. And that was accounted for in what way?

A. By the Jap and the German lines that were immediately excluded from the roster.

Q. Otherwise those figures represent substantially the membership of the Association?

A. That is right. There have been one or two deletions and one or two additions.

Q. Are all companies or persons performing

(Testimony of A. Boyd.)

stevedore service [248] loading and discharging vessels on the Pacific Coast, members of either plaintiff Association or one or more of the local associations?

A. They are.

Q. Do you have a membership book?

A. We have, yes.

Q. Do you have it with you?

A. It is here, yes, sir.

Q. Will you please turn to the place in the membership book where the name of the defendant appears?

A. The page is unnumbered where the signatures are.

Q. But you have turned to it?

A. I have turned to it.

Q. And it is there? A. Yes.

Q. And is that the original signature of the defendant?

A. Yes, sir, to the original by-laws.

Q. Attached to the original by-laws?

A. Attached to the original by-laws.

Q. Now on that same page is there a signature by a company known as the Northern Stevedore, Inc.?

A. Yes, sir, that is five signatures up from the bottom of the same page.

Q. And who signed the original signature to the by-laws of the plaintiff Association for that company?

A. The Northern Stevedores Company by F. E. Settersten.

(Testimony of A. Boyd.)

Q. Is that the same Mr. Settersten now president of the defendant company? A. It is.

Q. I call your attention to Plaintiff's Exhibit 10, the last [249] sheet, which is a photostatic copy of the original signatures of Griffiths and Sprague Stevedoring Company to the memorandum agreement and ask you if there is any other signature on that agreement.

A. Yes, right under Griffiths and Sprague Stevedoring Company by J. Weber is Northern Stevedores, Incorporated by F. E. Settersten.

Q. Is that the same Northern Stevedores, Inc. to which you referred as being in the membership book? A. Identical.

Q. And it is the same Mr. Settersten?

A. The same one.

Q. Do all persons or companies loading or discharging cargoes on the Pacific Coast pay tonnage assessments and have they from the beginning of the Association? A. They have.

Q. And in particular have those persons loading and discharging cargoes who performed no other function except being stevedores—have they from the beginning paid the tonnage assessment to the Association? A. They have yes.

Q. As secretary of the plaintiff association, do you make reports to the membership?

A. Yes.

Q. Tell us just generally of what those consist.

A. Well, there is a report to the membership at the annual meeting. They are always given an an-

(Testimony of A. Boyd.)

nual financial statement, and throughout the year on the authorization of the Board or the president, they are given other reports as occasion demands, that are sent out to the full membership. [250]

Q. And are reports sent out by you as secretary informative reports, also to the local associations? A. That is correct.

Q. And has that been the practice from the inception of the Association?

A. Since the beginning, yes.

Q. And continues down to and including the present? A. It does today, yes.

Q. How is the budget of the plaintiff Association arrived at?

A. The budgets for the port associations by the port managers, who prepare——

Q. May I stop you a moment? That covers expenditures.

A. Expenditures anticipated in that district like the Puget Sound District and the Columbia River District for Portland and San Francisco and Southern California.

Q. Expenditures by whom?

A. Expenditures for the Coast Association which have to be reimbursed.

Q. All right. Proceed.

A. These district budgets approved by the port managers are submitted to the boards of trustees or the directors of the several districts who pass on them, pare them down or raise them up, and

(Testimony of A. Boyd.)

they are finally approved and then they are sent to the Coast treasurer in San Francisco.

Q. That is you?

A. That is me. And there the port budgets are consolidated along with the general head office budget and this consolidated budget is submitted to the Budget and Finance Committee just prior to or several days prior to the annual meeting. They review the budget; it usually takes [251] two days, and they pare it down or raise it or make adjustments that they see fit. They make an official report to the Board of Directors at the annual meeting, and the Board of Directors——

Mr. Gose: (Interposing) If the Court please, I object to this line of testimony. I don't think we are at all interested in the details of the budget or how it is arrived at. The question is whether this defendant is liable for a tonnage tax, and the method of working out the budget or the details does not help any.

The Court: At the present moment I cannot see very much help to the Court. However, if I only let in that information that I know exactly what it is for in the beginning, I may not let in much. I will overrule the objection. I will let counsel know that I am not yet highly impressed with its importance.

Mr. Dobrin: Yes, I understand your Honor.

Q. On what budget is the Association now operating and has since the commencement of the war?

A. We are operating on the last budget that was submitted in 1941. The uncertainties of condi-

(Testimony of A. Boyd.)

tions caused us not to set up an annual budget, but the ports work on the last budget that was approved, and any increases have to be submitted to the Budget and Finance Committee for authorization before they can be incurred in the several districts.

Q. Now, what financial reports are given by the plaintiff Association to its members or local associations or directors or anyone else?

A. There is a financial statement submitted to the annual meeting and submitted to the members. It is in writing. [252] Monthly, there is a monthly financial statement given to directors and ex officio directors and port managers of each district and the port president.

Q. Each month?

A. Each month and annually too.

Q. And do those financial reports show moneys received and from what source and all expenditures made and for what by the plaintiff Association?

A. They do in summary form. They are not in minute detail, but they show the source and expenditures.

Q. Are the records of the plaintiff Association open at all times to all members?

A. That is a rule of the Board, and it has always been followed.

Q. And that includes both voting and associate members?

A. Everybody that is a member.

(Testimony of A. Boyd.)

Mr. Dobrin: That is all. You may inquire.

Cross Examination

By Mr. Gose:

Q. Do you send out occasionally mimeographed information sheets to the membership?

A. Oh, lots of it, yes.

Q. Do you send those to the associate members as well as the others?

A. The procedure is that we send it to all the Coast members of record, and then there is a supply sent to each of the district with instructions for the port managers there to see that all of their local members get a copy.

Q. Do you as secretary generally mail any such notice directly [253] to the various associate members such as the defendant in this case?

A. Not always; we do frequently, and I will explain why. Many of the shipping members are members in one or the other of the ports. Their agents are also members of the Coast Association and the district associations in other ports. And to be sure that everybody is fully informed, the Coast membership mailing list is sent out from San Francisco and an adequate supply sent to each of the ports so that every one of the members of a local association is fully advised of what everybody gets.

Q. Your illustration referred, as I understood you, to steamship company members and their agents. The defendant in this case falls in neither of those categories.

(Testimony of A. Boyd.)

A. No, I picked out that example because I wanted to explain why there was a dissemination in the mail. Sometimes it might happen with an associate member too. But it is usually a steamship member who will have a membership in one of the ports and who will also have an agent in the three other ports who are members of the local association in that port. And it is just as important to keep them informed as the head office of the member company.

Q. Yes, but that would be no particular reason for not sending it directly to the associate member, would it?

A. We have asked that the local managers be sure that the associate members do get it and that they are not overlooked from San Francisco, which might happen.

Q. Did you send a resolution concerning this tonnage tax——

Mr. Dobrin: (Interposing) Just a minute. In your admissions—— [254]

Mr. Gose: The by-laws provide it.

Mr. Dobrin: That is objected to as immaterial. In your admissions you admitted that you received it.

The Court: Overruled.

Q. The by-laws specifically provide for you to send a postal notice. Have you ever done so?

A. I am not sure about every; it has been done in some cases.

Q. Have you been familiar during your occu-

(Testimony of A. Boyd.)

pancy of the office of secretary-treasurer with the following article 16 of the by-laws: "Notice of any action taken by the Board of Directors with respect to dues or assessments shall be sent to the members promptly by registered mail, and shall not become effective until seven days after such mailing." Have you been familiar with that clause?

A. Yes, I am familiar with that.

Mr. Dobrin: And I want to object again. It is not within the issues. There is no defense asserted in this case that there is anything defective about the resolutions fixing the tonnage assessment by reason of the failure to send them by registered mail; and it is expressly admitted and already offered in evidence that the defendant received each and everyone of them. It is not within the issues.

Mr. Gose: I may say that is to be a subject for argument later. As far as not being within the issues is concerned, the plaintiff alleges duly levied assessments, and here is a provision of the by-laws providing for sending by registered mail of a notice, and I think I am entitled to show it has not been followed.

The Court: Objection overruled. [255]

Mr. Dobrin: Exception.

Q. I will show you Plaintiff's Exhibits 15, 16, 17, and 18, 15 being a copy of the resolution of the Board of Directors of the plaintiff adopted on April 16, 1942; 16 being a letter from yourself as secretary-treasurer dated April 27, 1942; 17 being a resolution adopted by the Board of Directors on

(Testimony of A. Boyd.)

June 25, 1942; and 18 another form letter from yourself referring to the resolution which is Plaintiff's Exhibit 17. Now, having all those exhibits in mind, having both of the corporate resolutions in mind, was any notice concerning either of those resolutions ever sent to any of the membership by registered mail? A. No, sir.

Q. And referring to the two form letters which are respectively Plaintiff's Exhibits 16 and 18, were either of those sent to the membership by registered mail? A. No, sir.

Q. I think after the institution of this suit you did send out a notice on or about November 16, 1944 that you did send by registered mail, is that correct? A. I don't recall.

Mr. Gose: Will you mark this Defendant's Exhibit C.

(3-page document marked November 16, 1944, was marked Defendant's Exhibit C for identification.)

Q. I will show you Defendant's Exhibit C for identification and ask you if you recognize it.

A. Yes, I do.

Q. And I will ask you if there appears a statement in the [256] upper lefthand corner "Registered mail"? A. Yes.

Mr. Dobrin: Just a minute. Let me see it.

Mr. Gose: Oh pardon me.

Mr. Dobrin: Objected to as improper cross examination.

The Court: Objection sustained.

(Testimony of A. Boyd.)

Mr. Gose: I think that is all, although I wish to call him as my own witness in due course.

Mr. Dobrin: Plaintiff rests.

(Recess.)

Mr. Gose: May it please the Court I indicated I think last Friday that our proof would be very brief and that I would not address a motion to the Court at this time. I am abiding by that statement. I think it unnecessary perhaps to make any extended opening statement because your Honor has a statement of the issues in the briefs that have been filed. But I did make a brief reference at the outset of the case, and it is essentially my purpose to complete it as I see it by supplying some things we deem material that I assume counsel does not. And I may say this, I will not be able to complete my case because of time limitations this afternoon, although I will make an effort at it, and counsel and I were discussing during the recess the proposition of having the record written up and providing your Honor with a copy, each side to bear half of the expense.

The Court: Now counsel, I want to say one thing. I had planned that we would quit this afternoon at our usual hour of 4:30. If counsel thinks that they [257] can get all the evidence in by 5:00 o'clock or 5:30 or 6:00, we will all stay on the job. It is a very desirable thing to have the evidence all in at one time. On the other hand, if it means that we will run over until tomorrow morning, I

am still very fearful of what litigants and witnesses and attorneys can think up overnight.

Mr. Gose: My thought is that we have been so inaccurate in our predictions, we would be safer to stop at 4:30.

(Discussion off the record.)

A. BOYD

having been previously sworn, was recalled and testified on behalf of the Defendant as follows:

Direct Examination

By Mr. Gose:

Q. Again returning to Defendant's Exhibit C that you and I were discussing a few moments ago, is that a form letter which was sent to the membership of the plaintiff Association?

A. That is right.

Q. To what members would that have been sent?

A. That was sent to all members.

Q. By that what do you mean? Sent directly to the associate members as well as voting members?

A. All members.

Q. Do you recall that of your own knowledge?

A. Yes.

Q. Do you recall whether it was sent by registered mail?

A. Yes.

Mr. Dobrin: Objected to as immaterial. [258]

The Court: Overruled.

(Testimony of A. Boyd.)

Q. Do you recall whether it was sent by registered mail as indicated? A. It was, sir.

Q. That, of course, was sent by you as part of your functions as secretary-treasurer?

A. That is correct.

Mr. Gose: I wish to offer this in evidence not only for the purpose of showing the mailing in this instance by registered mail, and also Paragraph 2 describes the background on an issue of fact that has been controverted here. If the Court cares to read it at this time.

The Court: Exhibit C is offered?

Mr. Gose: It is offered.

The Court: It is admitted.

Mr. Dobrin: Just a minute. I haven't seen it.

The Court: All right. He may see it.

Mr. Gose: Pardon me.

The Court: I waited, and I thought you were avoiding saying there was no objection and that you were not making any.

Mr. Dobrin: Objected to as immaterial to any issue in this case.

The Court: Let me see it please. My attention is particularly directed to the second paragraph?

Mr. Gose: Yes, that portion dealing, if your Honor please, with the historical practice of steamship companies having reported tonnage and paid the assessments——

The Court: Objection overruled. [259]

(Document previously marked Defendant's

(Testimony of A. Boyd.)

Exhibit C for identification was received in evidence.)

Mr. Dobrin: Exception.

The Court: Allowed.

Mr. Gose: I believe, Madam Clerk, you have a Plaintiff's Exhibit 3-A not admitted.

The Clerk: Yes.

Mr. Gose: Counsel, to avoid the necessity of interrogating Mr. Boyd, is it agreed that this is a true copy of the complete resolution of July 31, 1937, which it purports to be?

Mr. Dobrin: It is agreed that that is.

The Court: What is that?

Mr. Gose: 3-A. I may say this for the Court's information. This is a true copy of the resolution adopted by the Board of Directors of the plaintiff on July 31, 1937, consisting of six numbered paragraphs. I will hand it to your Honor. The plaintiff has already put in evidence in this case the paragraph numbered 2 as Exhibit 3, just Paragraph No. 2. However, the entire resolution, and it is the first resolution promulgated by the Board of Directors of the plaintiff on this subject—the entire resolution consists of six paragraphs. Paragraph 1 refers to collective reporting and central pay offices. Paragraphs 3 and 6 refer to various other subjects in connection with the financing of the organization. I should like to have before the Court a complete resolution.

The Court: Do you offer it?

Mr. Gose: Yes. [260]

(Testimony of A. Boyd.)

(Discussion off the record.)

The Court: Any objection?

Mr. Dobrin: No.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit 3-A for identification was received in evidence.)

Q. Can you pick out your minutes in your minute book for February 15, 1940?

A. Any date that is in there.

Q. Will you step down and get it please?

The Court: February 15 of what year?

Mr. Gose: 1940.

(Document dated February 15, 1940 was marked Defendant's Exhibit D for identification.)

Q. Do you have the minutes of the directors' meeting of February 15, 1940?

A. This is it. (Indicating in minute book.)

Q. Let me examine it a moment. (Does so.) I show you, Mr. Boyd, Defendant's Exhibit D for identification and I will ask you if that is a true copy of the recommendation of the stevedoring committee made on February 15, 1940 and filed as part of the original minutes of the plaintiff corporation? A. That is correct, sir.

Q. And before offering that I will ask you, do you have similar minutes there which show a meeting of the Board of Directors on the same date?

A. That is correct.

(Testimony of A. Boyd.)

MR. GOSE: Will you mark this Defendant's Exhibit E. [261]

(Document dated February 15, 1940 was marked Defendant's Exhibit E for identification.)

Q. Showing you Defendant's Exhibit E for identification, may I ask you if that is a true copy of the resolution adopted by the Board of Directors of the plaintiff at a meeting held on February 15, 1940 which, according to the language of the resolution, adopts the report of the Stevedoring Committee? A. It is, sir.

MR. GOSE: I am going to offer these. Would you care to examine them?

MR. DOBRIN: Yes, I know what they are. I object to the offer on the ground that, as I think counsel knows, and as the record already knows, this resolution was rescinded on May 8, 1940, as appears by Exhibit 9, I think it is, which is already in evidence.

THE COURT: I will look at 9 and D and E. E was offered?

MR. GOSE: Yes. I haven't made a statement in support of them. I just showed them to counsel. If you have any doubt about it, I would like to be heard in support of the offer.

MR. DOBRIN: I call your Honor's attention to that first paragraph of the memorandum of agreement.

THE COURT: Where does it say this previous one was rescinded?

(Testimony of A. Boyd.)

Mr. Dobrin: In the first paragraph of the memorandum agreement.

The Court: Oh, yes.

(Argument.) [262]

The Court: Objection overruled. Exhibits D and E admitted.

(Documents previously marked Defendant's Exhibits D and E for identification were received in evidence.)

Mr. Dobrin: Exception.

The Court: Allowed.

(Excerpt from minutes of Joint Meeting of Board of Directors dated January 12, 1943 was marked Defendant's Exhibit F for identification.)

Q. I will ask you, Mr. Boyd, to step down and get your minute book showing the meeting for January 12, 1943.

A. (Witness does so.)

Q. Is this the minute of January 12, 1943 of a joint meeting of the Board of Directors of the Waterfront Employers Association of the Pacific Coast and the Waterfront Employers Association of San Francisco?

A. That is correct.

The Court: What year?

Mr. Gose: January 12, 1943.

Q. I will show you Defendant's Exhibit F for identification and I will ask you to examine it and tell me if that is a true excerpt from those minutes for that meeting.

(Testimony of A. Boyd.)

A. Yes, that is; correct, they are.

Mr. Gose: I will offer Exhibit F in evidence for two purposes, one to show the history of this controversy as dealt with by the Board of Directors of the plaintiff Association, in a general way showing what their program was, what transpired as they went along; and, secondarily, to bring out the fact that again here the plaintiff has [263] endeavored to use indirect methods to collect this tax in this particular case. The resolution will show that Mr. Foisie was instructed to get in touch with the Army and endeavor to influence it——

Mr. Dobrin: It doesn't say so.

Mr. Gose: We will let the Court see it.

Mr. Dobrin: I think it would be better.

The Court: Are you offering it?

Mr. Gose: I am offering it.

Mr. Dobrin: I object to that on the ground that it is immaterial to any issue in this case.

Mr. Gose: After your Honor has read it I would like to discuss it more specifically.

The Court: Objection overruled.

(Document previously marked Defendant's Exhibit F for identification was received in evidence.)

(Letter dated March 12, 1943 was marked Defendant's Exhibit G for identification.)

(Letter dated March 12, 1943 was marked Defendant's Exhibit H for identification.)

(Testimony of A. Boyd.)

(Letter dated March 25, 1943 was marked Defendant's Exhibit I for identification.)

(Letter dated April 19, 1943 was marked Defendant's Exhibit J for identification.)

(Letter dated May 14, 1943 was marked Defendant's Exhibit K for identification.)

Mr. Gose: I will now offer in evidence Defendant's Exhibit G for identification, a letter of one page, a copy of a letter of one page dated March 12, 1943, addressed to Special San Francisco Committee. [264]

The Court: What date is that letter?

Mr. Gose: March 12, 1943 addressed to Special San Francisco Committee: J. A. Lunny, W. P. Sexton, W. J. Bush, Thomas James, and written by Special Committee representing Employers of Washington appointed by Mr. Middleton, signed by R. C. Clapp, S. Stocking, William Semar, F. E. Settersten. I offer that.

The Court: Is there any objection?

Mr. Dobrin: Yes, I object to that on the ground that it is immaterial to any issue here. The mere existence of a letter itself does not prove anything; and if it is offered as proof of anything that it contains, I object to it as hearsay. In other words, the way to prove a fact is to bring a witness in here so that he can be permitted to be cross examined. That letter contains alleged statements of fact by the signatories to the letter. We don't have any opportunity to cross examine them on it.

(Testimony of A. Boyd.)

I don't believe that is the way for him to prove facts. If the offer is merely to prove that such a letter was written, that would be one thing, and that would clearly be absolutely immaterial to any issue here, that someone had written a letter, that one committee wrote a letter to another committee. This plaintiff Association can't be bound by letters that people write around to each other.

Mr. Gose: Counsel, I don't think you have developed the facts fully. Might I have Plaintiff's Exhibit 24? This series of letters, if your Honor please, are connecting links as I see it.

(Argument.) [265]

The Court: The Court is advised there are some more letters or exhibits which have some connection, at least claimed by the defendant, with this proffered Exhibit G. Ruling reserved as to G.

Mr. Gose: I now offer—and I think we might shorten the time because I think the same objection will run to all——

Mr. Dobrin: (Interposing) Yes, but I have to state my objection as you offer them.

Mr. Gose: I appreciate that. I now offer Defendant's Exhibit H, another letter.

Mr. Dobrin: Can't you give the date so that we can identify them?

Mr. Gose: Another letter of March 12, 1943 from the Seattle Committee to the San Francisco Committee; a letter of March 25, 1943 from the same San Francisco Committee——

Mr. Dobrin: What is that?

(Testimony of A. Boyd.)

Mr. Gose: Exhibit I.

The Court: Exhibit I, a letter.

Mr. Gose: —from the same San Francisco Committee, purporting to be in response to letters of March 12, which are G and H respectively; and I offer Exhibit J, which is a response from the Seattle Committee under date of April 19, 1943 to the San Francisco Committee, the same committees heretofore referred to; and I offer finally Exhibit K, which is a letter of the San Francisco Committee to the Seattle Committee dated May 14, 1943, specifically answering the Exhibit J, the letter of April 19, 1943 and telling the Seattle Committee to come to San Francisco [266] on May 26 for the meeting to be held by the Coast Board. They all tie up and lead into that meeting of May 26 and 27.

Mr. Dobrin: I think I can make my objection quite plain. I object on the ground that the letters are incompetent and immaterial and irrelevant to any issue in this case. They contain hearsay statements of fact by persons other than the plaintiff in this case or its officers, and what it all amounts to is this, counsel says he wants to show what took place at the meeting on May 26, 1943. Well, here is the situation quite simply. The record already shows that a San Francisco Committee came up here for the purpose of seeing if they couldn't get Griffiths and Sprague to pay their tonnage assessments. They came up here and they were successful. Griffiths and Sprague promised orally and in writ-

(Testimony of A. Boyd.)

ing to pay it. So the committee went home. They had accomplished their mission. But while they were here the local Washington Association, as the record already shows, appointed a committee to further discuss with the San Francisco Committee so-called possible changes in the method of tonnage assessments used, and then followed these letters back and forth between the parties containing all kinds of statements, arguments and everything else that people could think of to discuss this subject. Then followed a meeting, as the evidence shows, in San Francisco on May 26, 1943. That is already in evidence—at which the Seattle Committee, the San Francisco Committee and a group from Portland who had not theretofore been involved in this, met, including Mr. Weber of the defendant [267] company. At that meeting, irrespective of anything that had taken place, irrespective of what contentions one way or the other by these two committees in this exchanged correspondence, at that meeting those three groups prepared a written proposal for submission to the Board of Directors of the plaintiff. That written proposal is the one of May 26, 1943. So whatever went before this exchange of correspondence or even before that, going back as far as you want to find any arguments or discussions about this subject, they all culminated in the written proposals of May 26, 1943 by the three combined groups that met in San Francisco. That is in evidence. That proposal was presented to the Board of Directors on May 27, 1943 and it was

(Testimony of A. Boyd.)

approved. Now, anything that precedes that on this subject is absolutely immaterial because whatever they discussed or whatever statements of fact were made, those were all discarded and the wishes and desires of the Seattle Committee, with Mr. Weber on it, were reduced to writing and presented to the Board on May 27, 1943—considered by the Board of Directors and approved. Why should that be permitted to be put in this record?

(Argument.)

The Court: I am rather doubtful that I can make a correct ruling on the objections and offers at the present moment. I haven't correlated in my mind the numerous exhibits which have already been introduced, and I think I will reserve ruling as to all this last offer.

Mr. Gose: That is very satisfactory and I may say, your Honor, if the Court thinks they are immaterial, [268] they need not be considered in its decision if they are improper.

The Court: I am to understand, counsel, that there is no objection on the ground of authenticity of these exhibits?

Mr. Dobrin: Oh, no, we are not questioning that, your Honor.

The Court: There has been no identification of them by any witness. They have been only presented.

Mr. Dobrin: That is correct. We agree that if they went through all the labor of proving their authenticity, we would eventually get to that end.

(Testimony of A. Boyd.)

Q. Now, will you obtain for me your books for April and June 1942?

A. (Witness does so.)

Q. I believe you have, Mr. Boyd, 17 members on the Board of Directors of the plaintiff corporation?

A. That is right.

Q. And I believe you have certain regular quarterly meetings of the plaintiff corporation, do you not?

A. That is right.

Q. What months do those quarterly meetings fall in?

A. February, May, August and November; the second Wednesday, I believe, in each of those months.

Q. So that any meeting held in April or June would not be a regular meeting?

The Court: What months are the regular meetings held in?

The Witness: February, May, August and November.

Q. Any meeting held in April or June would not then be a [269] regular meeting?

A. It would be a special meeting; that is right.

Q. Addressing your attention to your meeting of April 16, 1942, does your minute book show any notice having been given to the directors of that meeting?

The Court: April what?

Mr. Gose: April 16, 1942.

Mr. Dobrin: I object to the question as being

(Testimony of A. Boyd.)

without any issues in the case, if I understand it. That April 16, 1942 resolution was——

Mr. Gose: It is one of the two resolutions you rely on.

Mr. Dobrin: That is Exhibit 15, and your admission—Plaintiff's Exhibit 15 in this case, as the record shows, was Exhibit I to Plaintiff's Bill of Particulars. That is the request for admission and the admission which has already been introduced in evidence in respect to this resolution.

The Court: What is the admission?

Mr. Dobrin: "That Exhibit I to the Plaintiff's Bill of Particulars on file herein sets forth a true copy of the resolution duly adopted by the Board of Directors of the plaintiff on April 16, 1942." Now, that means, if it means anything, that it is in all respects regular, and they have admitted it, and that is no longer in issue, and cannot be raised.

The Court: Why should I not sustain the objection?

Mr. Gose: It was not my purpose—to me, it is procedural propriety, but I think it is minor, and if you think I have gone beyond—— [270]

The Court: (Interposing) I will sustain the objection.

Q. Will you tell me, Mr. Boyd, if you know, did the membership as distinct from the,—has the membership of the plaintiff corporation as distinct from its Board of Directors ever taken any action

(Testimony of A. Boyd.)

in respect to the fixing of this tonnage tax? Has there ever been a vote of the membership?

Mr. Dobrin: Just a minute. On that issue I again want to interpose the same objection. Every resolution that has been introduced here on tonnage assessment was preceded by a request for admission that the resolution was duly adopted, and in every case they have admitted it. Now, that is not within the issues as pleaded. There is no such objection raised in this case in any of the affirmative defenses, and, specifically, in each instance they have admitted that the resolutions were duly adopted. Now, it seems to me there ought to be some time when the defendant would run out of the right to raise questions. He has not raised it in his answer, and he has admitted in the request for admission that they were duly adopted. Having been admitted that they were duly adopted, I say it is improper to permit him to go behind it. That is what we came to trial on, the admissions we have in evidence.

Mr. Gose: I by no means concede this point. If your Honor please, duly adopted, as I understand it, refers to specific procedural requirements as to the meeting having been convened or this being the action of the directors. But the point I am now urging and the [271] question I am now presenting is based on that provision of the by-laws of Article 4 which empowers the Board of Director to levy, assess and collect dues and so on, but it says in the latter portion, "But the Board of Directors shall not have power to levy, assess or col-

(Testimony of A. Boyd.)

lect dues or assessments in excess of a maximum rate to be fixed, at a regular or special meeting, by the vote of members holding a majority of the voting power of the entire membership.”

The Court: Let me see that. Is it your position that the members holding a majority of the voting power of the entire membership fixed a maximum which has been exceeded by this resolution?

Mr. Gose: It is my position that it is a condition precedent to the exercise of the power by the Board that the membership first fix a maximum and that the Board has the power to operate within it. The article says, “The Board * * * shall not have power to levy, assess or collect,” and it is my position that the assessment does not come into being until the membership has placed a ceiling on——

The Court: (Interposing) Is there anything in your pleadings that would raise this issue?

Mr. Gose: Nothing except the general denial of appropriate resolutions.

The Court: This is not a ruling yet, counsel, but it does seem to me that there is much weight in the contention of Mr. Dobrin that your admission forecloses this attempt of yours.

Mr. Gose: In that connection, your Honor, I would [272] like, with your Honor’s permission, to withdraw the admission to the extent of stating that it was never the intention or purpose of the defendant to construe “duly adopted” as to bar us from that defense. That was a request as to

(Testimony of A. Boyd.)

whether that was a true copy of the resolution duly adopted. That was a request as to whether that was a true copy of the resolution duly adopted. I can see counsel's point, and perhaps there is some merit as to the procedural aspect, but I certainly didn't intend to admit the constitutional power of the Board to adopt any such resolution, and I certainly would like to withdraw any admission of the word "duly".

The Court: It comes a little late after plaintiff rests. In many respects plaintiff has predicated its case on your admission. For you to come in now and say that you want to change——

Mr. Gose: (Interposing) There isn't the slightest element of surprise in the case. Either you have done it or your haven't.

Mr. Dobrin: It certainly is a surprise to me.

The Court: Just a minute, counsel. I think what is at issue at the present moment is of greater concern than the issue of this lawsuit. Litigants, of course, can have difficulty in agreeing with the Court in such an announcement because to a litigant the all-important thing is that the particular controversy be fairly and correctly determined. Those who are acquainted however with trials, lawyers and judges, know that no judge can ever be sure and no jury can ever be sure, regardless of how much or how little testimony is admitted, that the [273] decision is either correct or is fair. The only thing a judge can ever hope or a jury can ever hope is that a reasonable majority of the

(Testimony of A. Boyd.)

decisions are reasonably correct and reasonably fair.

So that whatever is done in the matter of procedure must be viewed from the standpoint of precedent for what may happen in the future. Until not so long ago there was no such procedure as has been used in this case. But at the desire of many thoughtful persons the rules of civil procedure were proposed, and after much consideration were adopted as a necessary step in progressive court practice. If I permit the withdrawal in this case, I am going to make it very difficult to ever insist that admissions are other than temporary. The defendant is represented by able counsel. The preliminaries to this trial have been exceedingly meticulously managed; and I have the opinion that even at the risk of this case being decided wrongly, that a greater ill would result from permitting the requested withdrawal than the benefit that would come from permitting it even though the defendant rests on this issue.

I am not persuaded that the point is as important to the case as counsel may think, and I am not persuaded at the present moment that the plaintiff would be hurt as much as Mr. Dobrin fears or that the defendant would be helped as much. But I am absolutely satisfied that to permit it here means that as far as this court is concerned this rule of civil procedure has become a dead letter until I would suffer the chagrin of telling counsel in the next case that I had one rule in this lawsuit

(Testimony of A. Boyd.)

and [274] another rule in a subsequent case. I am not willing at the present moment to invite that chagrin, not because of any personal pride in the ruling, but because I would have the chagrin of feeling that I was being unfair with one party and attempting to be fair with some other. So the requested withdrawal is denied.

Mr. Gose: With respect to your Honor's ruling, I don't concede, and I think the record should show that the scope of the admission is, as a matter of fact, not what plaintiff maintains.

The Court: You will be permitted to contend, of course, that your admission is of less consequence than counsel thinks, but your admission, whatever it is, stands in this case.

Mr. Gose: There is an objection also, if your Honor please, I think in the record to the question that I put predicated, your Honor, on the fact that I made the admission. Has your Honor ruled on that?

(Question and answer read.)

Mr. Dobrin: I move to strike the answer, and I object to the question on the ground that it is without the issue of this case. The contention now raised was raised for the first time that I saw it any place or knew that there was any suggestion of it, was after I got the trial memorandum and read it and saw some suggestion in there that there might be among other defects not specified the one now contended for. In the first place, if it were contended that that provision of the by-laws re-

(Testimony of A. Boyd.)

quires first a setting of a maximum before the Board of Directors could levy any assessment, that is an affirmative defense and should have been set up. There is no affirmative [275] defense in this case raising that issue; and in addition, as to each resolution pertaining to tonnage assessment, the request for admission was to whether or not it was duly adopted; and in every instance it was admitted that it was. Now, when we come to the trial there wasn't any such issue in this case. When I rested my case there was no such issue; and I don't think counsel should be permitted to raise it now. It is the same position your Honor has already referred to in connection with the requestions for admission.

Mr. Gose: The allegation, of course, was that pursuant to the by-laws this resolution had been duly adopted.

The Court: Is it your purpose to show that there was not a vote?

Mr. Gose: To the best of my knowledge and my research, there was no affirmative vote, no action taken by the Board.

The Court: Mr. Reporter, will you read the question and answer?

(Question and answer read.)

The Court: This witness said there was.

Mr. Dobrin: There is a motion, of course, before the Court to strike that. I am objecting because I don't think the issue of whether there was a vote or was not a vote has anything to do with the issues

(Testimony of A. Boyd.)

in this case for the reason I already stated. I don't think I could add anything to my reasons.

Mr. Gose: My position on the contrary is that there must be a resolution not only adopted in a procedurally [276] proper manner but it must be in conformity with the by-laws, and "when I admitted as a matter of fact that there was a resolution duly adopted, I meant procedurally the Board of Directors had adopted that resolution. That is the construction I put on it and always have, and I think I am still entitled to inquire whether or not that resolution so procedurally adopted was in the exercise of any valid power——

Mr. Dobrin: (Interposing) I think that is an odd argument. If I were asked to admit a resolution levying an assessment was duly adopted and I had in mind that I was going to contest the fact that the Board did not have any power, I certainly wouldn't admit it.

The Court: Well, we have a rather peculiar situation. The defendant wishes to show by this witness that there was no vote. The witness has given a statement that there was, and the party who wishes to strike the affirmative statement is opposed to the party who is contending there was none. I will reserve ruling on this, and I am going to allow this witness to be examined on this question under reservation of ruling, which means all this examination is an offer of proof. I am a little intrigued by this situation in any event. So it is understood this is in the nature of an offer of proof, and it

(Testimony of A. Boyd.)

is all over the objection of the plaintiff. It is understood it is not in evidence unless and until such time as I have given counsel an opportunity to argue against the offer of proof. It is an offer of proof under oath. You may proceed.

Mr. Gose: I don't entertain any thought it would [277] do any good to try to finish tonight. We might perhaps try to get Mr. Boyd out of the way so that he will not have to come back.

The Court: And the reservation of ruling will apply to the question and his answer, to which you moved to strike.

Q. Did the membership take some action with respect to the tonnage tax at some time as shown by your minutes? A. They did.

Q. On what occasions? A. Back in 1937.

Q. Will you show me in the minute book where it is indicated?

A. It is not in the minute book. They certified to the resolution and accepted the resolution sent out to them by mail.

Q. Might I see that particular part of the minute book you are referring to?

Mr. Dobrin: For fear that when this issue is subsequently argued that your Honor might think I had another thought then that I don't have now, I want to say this, that in my judgment all we are talking about is absolutely immaterial because even though it were shown and could be shown that that by-law required that the membership first fix a ceiling before the Board could do anything, it

(Testimony of A. Boyd.)

is in evidence that not only this defendant but all of the members of the Association have from the beginning, all of them have been paying their tonnage assessment and no one has ever raised the issue. I just mention it so that when I argue that point, if we get to it, that it won't appear as an afterthought on that matter. [278]

Q. Is what you are pointing out to me a part of the reconvened special meeting of the Board of Directors of the Waterfront Employers Association of the Pacific Coast held on July 31, 1937?

A. That is right.

Q. That is not a meeting of the members of the Association, the 84 and the 47, or their equivalent?

A. No, that is correct. This resolution was ratified by all the members. It was sent out to them and certified by all the members, each having ratified that resolution.

Q. Each having ratified it, you say?

A. Yes.

Q. How did they do it?

A. They got a certified copy of this resolution with their consent on it, which was signed by some official of the company.

Q. And you mean they sent it back in that fashion? A. That is correct.

Q. Do you have any of those copies with you that they sent back?

A. I think I have. May I look in my book (referring to documents). They were sent out, a

(Testimony of A. Boyd.)

certified copy of their resolution, and this is their consent, their ratification.

Mr. Dobrin: A little louder.

The Witness: This is a certified copy of the directors' resolution of July 31, 1937, and attached to each one of these certified copies of the resolution is the signed,—it reads like this, "We hereby ratify and approve the resolution adopted July 31, 1937 by the Board [279] of Directors of the Water-front Employers Association of the Pacific Coast fixing the rate of assessment and budgetary matters enumerated therein as per certified copy of said resolution attached to this certification."

Q. All right. I have just a couple of questions in connection with that. No comparable thing was done by the membership at a regular or special meeting of the membership?

A. That is correct, sir.

Q. And furthermore nothing similar to that was ever done except for the resolution of July 31, 1937, was there?

A. I believe that is correct.

The Court: Let me see the resolution of July 31, 1937. Is that one of the exhibits?

Mr. Gose: That is Exhibit 3-A in its entirety. You may inquire.

The Court: Well, it is at least 4:30.

(Discussion off the record.)

The Court: The trial of this cause is continued until Friday Morning, May 18, at 10:00 o'clock a.m. or as soon thereafter as the matter may be heard.

(Testimony of A. Boyd.)

At this time the Court wishes the minute to show that the Court is urging counsel to endeavor to finish the case in one day, and the minute may further show that the Court will listen to an application by counsel in event they don't finish in the one day that the case be continued on Saturday the 19th. I am being a little careful not to contract with you because I am not trying to invite you to make Mr. Long's prediction come true.

(Discussion off the record.)

(Trial adjourned to 10:00 a.m., May 18, 1945.)

May 17, 1945, 2:00 p. m.

The Court: Gentlemen, you have this afternoon and all day tomorrow. I hope under those circumstances that you finish this trial before regular closing time tomorrow afternoon. You may proceed.

Mr. Gose: I think we had Mr. Boyd on the stand. Will you resume the stand, Mr. Boyd, please?

A. BOYD

having been previously sworn, was recalled and testified on behalf of the Defendant as follows:

Direct Examination

By Mr. Gose:

Q. Mr. Boyd, the defendant Griffiths and Sprague Stevedoring Company is an associate member of the plaintiff corporation, is it not?

(Testimony of A. Boyd.)

A. That is right.

Q. And has been at all times since the origin of the plaintiff association in 1937?

A. That is correct, sir.

Q. It is not now and never has been a voting member, has it? A. No, sir.

Q. Now, as to some other members, your records indicate that Ames Terminal is an associate member of the plaintiff corporation?

A. That is right.

Q. Where does it do business by the way?

A. I believe they are in Seattle. [281]

Q. Western Stevedore Company,—is that an associate member? A. Yes, sir.

Q. And it does business in Seattle too, does it not?

A. In the Puget Sound area and Seattle.

Q. Salmon Terminals,—is that an associate member? A. Yes, it is.

Q. Also doing business in Seattle?

A. I think so, yes.

Q. Schafer Terminals,—is that an associate member doing business in Tacoma?

A. Let's see. Schafer Terminals,—I don't have them on this associate membership list, so I guess they never did,—don't belong.

Q. Puget Sound Freight Lines?

A. No, they are not.

Q. Of Tacoma? A. No.

Q. Baker Dock Company of Tacoma?

A. No, sir.

(Testimony of A. Boyd.)

Q. None of those Tacoma organizations are members of the Coast Association?

A. That is correct.

Q. How about the Rothschild Company?

A. You mean Rothschild-International?

Q. Yes.

A. Yes, they are associate members.

Q. Where do they do business?

A. Puget Sound generally, I believe.

Q. Those people that you mentioned who are associate members, [282] aren't any of them voting members?

A. An associate member is not a voting member.

Q. And cannot be both?

A. According to the by-laws.

Mr. Gose: I will ask that this be marked for identification, please. I think my last exhibit was K. Counsel, I furnished you a copy of this. Is it agreed that that is a true copy?

Mr. Dobrin: Yes.

(Document purporting to be resolution of November 10, 1943 by Board of Directors of Waterfront Employers' Association of the Pacific Coast was marked Defendant's Exhibit L for identification.)

Q. Mr. Boyd, I am showing you Defendant's Exhibit L for identification, which purports to be a true copy of the resolution adopted by the Board of Directors of the Waterfront Employers' Association of the Pacific Coast on November 10, 1943. Can you tell me whether that is a true copy of a

(Testimony of A. Boyd.)

resolution adopted by the Board of Directors of the plaintiff corporation on that date?

A. That is, sir.

The Court: What date?

Mr. Gose: November 10, 1943. I am offering this in evidence.

Mr. Dobrin: Objected to as immaterial.

The Court: Let me see it.

Mr. Dobrin: And after your Honor has read it, I would like to comment on the objection further.

(Court examines Defendant's Exhibit L for identification.) [283]

Mr. Dobrin: The ground of immateriality is that it has nothing to do with any issue in this case of which I am advised. This is a recommendation that the Board have a study made of the situation as to delinquent members, and I can't conceive of its importance in this case at all.

The Court: Objection overruled. Exhibit L admitted.

(Document previously marked Defendant's Exhibit L for identification was received in evidence.)

Mr. Gose: You may inquire.

Cross Examination

By Mr. Dobrin:

Q. Mr. Boyd, I call your attention to Defendant's Exhibit C, which is in evidence, being a letter signed by you as secretary-treasurer dated November 16, 1944.

(Testimony of A. Boyd.)

The Court: That is what exhibit?

Mr. Dobrin: Exhibit C. Do you have an extra copy of that exhibit?

Mr. Gose: No, I don't. That is the only one I have. I don't have one of my own.

The Court: Is that a letter?

Mr. Dobrin: Yes. I would like to approach the witness if you have a copy of the exhibit.

The Court: Do you have a copy for the witness?

Mr. Dobrin: Yes.

Q. I call your attention, Mr. Boyd, to the second paragraph of the first page of this exhibit and particularly to the [284] second sentence, reading as follows, "Formerly, with minor exceptions, all tonnage was reported to the Association and assessments paid by member steamship companies, contracting stevedores paying on no cargo other than such non-member tonnage handled by them." Is that an accurate statement?

A. No, it is not.

Q. In what respect is it inaccurate?

A. In that it is stated there that contracting stevedores pay on no cargo other than such non-member tonnage handled by them. That was a general practice, but it didn't cover all the cases; there were exceptions.

Q. And by "exceptions" what do you refer to?

A. There are a number of instances where contracting stevedores did pay for member steamship companies,—paid their tonnage.

Q. Paid the tonnage assessment?

(Testimony of A. Boyd.)

A. Paid the tonnage assessment, yes.

Q. In cases where they handle cargo, load and discharge it, for member companies?

A. That is correct.

Q. And do they still do that?

A. That is right. It is the exception, not the rule.

Q. But the exception still exists?

A. It does very pronouncedly.

Q. Was that particular point of any materiality in connection with this letter that you wrote?

Mr. Gose: Oh, I object to that. The letter speaks for itself, if your Honor please, what its purpose was. I don't think he should be permitted to say what is [285] material and what is not.

The Court: What the witness says will not bind me, of course, but he may say it. Objection overruled.

Mr. Dobrin: Read the question please.

(Question read.)

A. No, sir.

Q. I show you Defendant's Exhibit D, being a recommendation of the stevedoring Committee dated February 15, 1940, and I ask you whether that recommendation was ever put into force and effect?

A. No, sir, it never was.

Q. I show you Defendant's Exhibit E for identification, and I will state for the record that that exhibit—

The Court: E for identification?

(Testimony of A. Boyd.)

Mr. Dobrin: Yes, and I will state for the record that Exhibit E refers to Exhibit D, being the Board's resolution adopting the recommendation which appears in Exhibit D.

Q. Mr. Boyd, was that resolution as shown on Exhibit E ever put into force and effect?

A. No, sir, it never was.

Q. Was the resolution shown in Exhibit E adopting the recommendation of the Stevedoring Committee shown on Exhibit D ever rescinded by the Board of the plaintiff? A. Yes.

Mr. Gose: I object to that on the ground that the best evidence, I think, on that subject would be a subsequent resolution. If it was rescinded, it should show by resolution.

The Court: I think so. [286]

Q. I show you Exhibit 9, Mr. Boyd, and ask you to point out in that document anything pertaining to the resolution shown on Exhibit E.

A. Down under Memorandum of Agreement dated May 9, 1940.

Q. And what part do you say is applicable?

A. Which is as follows, "Pursuant to resolution of the Board of Directors of the Waterfront Employers' Association of the Pacific Coast passed May 8, 1940, which rescinds the resolution of February 15, 1940 on this subject.

Q. Now what resolution of February 15, 1940 was being referred to in this document Exhibit 9?

A. That is Exhibit, that was just——

Q. (Interposing) The previous exhibit.

(Testimony of A. Boyd.)

A. Exhibit E, I believe.

Q. I ask you again, to what resolution of February 15, 1940 was reference made in Exhibit 9?

A. That refers to the recommendation of the Stevedoring Committee which was adopted by the Board dated February 15, 1940, marked Exhibit D.

Q. And the Board's resolution appears on Exhibit E?

A. Exhibit E, yes, sir.

Q. And thereafter did the plaintiff association at any time consider the recommendation of the Stevedoring Committee shown in Exhibit D and the resolution shown in Exhibit E of further force or effect?

A. You mean after the February resolution?

Q. Yes.

A. No, sir.

Mr. Dobrin: The cross examination is completed, your Honor. [287]

Redirect Examination

By Mr. Gose:

Q. Mr. Boyd, you stated that,—to be more precise, you pointed out in Plaintiff's Exhibit 9 the language "Pursuant to resolution of the Board of Directors of the Waterfront Employers' Association of the Pacific Coast passed on May 8, 1940". Can you tell us what resolution of May 8, 1940 that refers to?

A. Well, that refers to this resolution that adopted this report.

Q. It refers to the resolution immediately preceding on Plaintiff's Exhibit 9?

(Testimony of A. Boyd.)

A. That is right, adopting the memorandum agreement, yes, sir.

Q. It doesn't refer to Plaintiff's Exhibit 8 then, I take it, which is also a resolution of May 8, 1940?

A. Well, no, it doesn't refer to this. This appointed a committee to draft the memorandum of agreement. This was prior, and this is the resolution that adopts the report which rescinded the February agreement, which was never put into effect.

Q. So that we are entirely clear, the resolution of May 8 or 9, 1940 that is referred to, is the first paragraph of Plaintiff's Exhibit 9?

A. Adopting that whole report, yes.

Mr. Gose: Nothing further.

Mr. Dobrin: That is all. You may step down, Mr. Boyd.

(Witness excused.) [288]

K. J. MIDDLETON

being first duly sworn, on oath testified in behalf of the Defendant as follows:

Direct Examination

By Mr. Gose:

Q. State your name please.

A. K. J. Middleton.

Q. What is your occupation?

A. I am Vice-President of the Waterfront Employers' Association of the Pacific Coast and presi-

(Testimony of K. J. Middleton.)

dent of the Waterfront Employers' Association of Washington.

Q. You live here in Seattle?

A. Yes, sir.

Q. And have for a considerable period of time?

A. Yes.

Q. For how long, if you will please?

A. Since 1916.

Q. Since 1916. How long have you occupied each of these two positions that you were mentioning, vice-president of the Coast Association?

A. Approximately January 1, 1942.

Q. Since January 1, 1942 you have been vice-president of the Coast Association? A. Yes.

Q. How long have you been president of the Waterfront Employers of Washington?

A. Approximately the same time.

Q. Since January 1942? A. Yes.

Q. Prior to that time what business were you engaged in?

A. With the firm of Dodwell & Company. [289]

Q. You were what?

A. Director of Dodwell & Company, a lumber and shipping firm. I was located in Seattle.

Q. You were located in Seattle?

A. The firm has branches in many places all over the world.

Mr. Gose: Mark this please.

(Document purporting to be resolution adopted by Board of Trustees of Waterfront Employers Association of Washington Novem-

(Testimony of K. J. Middleton.)

ber 24, 1942 was marked Defendant's Exhibit M for identification.)

Q. I will show you this document marked Defendant's Exhibit M for identification and I will ask you if that is a true copy of a resolution adopted on November 24, 1942 by the Board of Trustees of the Waterfront Employers Association of Washington.

The Court: What date?

Mr. Gose: November 24, 1942.

Mr. Dobrin: Is that the document you gave me?

Mr. Gose: That is a copy.

Mr. Dobrin: It is not correct; I can tell you that.

Q. Do you have the minute book for that particular day here?

A. I don't think so, no. That is the Washington?

Q. The Washington Association.

A. No.

Q. You didn't bring that with you?

A. No, I can get it.

The Court: Is there an answer by the witness?

The Witness: I was about to say when I was interrupted, to the best of my knowledge it is, but counsel [290] stated it is incorrect.

Q. I don't know what is wrong with it. I have taken it from the correspondence. May I have the letter?

Mr. Dobrin: I may be wrong but I thought I—

(Testimony of K. J. Middleton.)

Mr. Gose: (Interposing) Counsel has agreed that this will constitute a part of it, and that is as much as I need so far as I am very vitally interested in at all.

The Court: Is it agreed now it is a part of such resolution?

Mr. Gose: Yes, that is what I understood.

Mr. Dobrin: That is correct. It is a part.

Mr. Gose: I will offer it in evidence. I think, it has been amply identified for that purpose.

Mr. Dobrin: Just a minute.

The Court: Exhibit M is offered. Any objection?

Mr. Dobrin: Just a minute. If the Court please, I object to the resolution, first, on this ground, that this purports to be a resolution and is a part of the resolution adopted by the Waterfront Employers of Washington, the trustees, on November 24, 1942. No resolution which the Board of Trustees that corporation could pass could be binding in any way upon this plaintiff association; and for that reason any action which was taken on this date or any prior or subsequent date by that Association by its trustees would be immaterial to any issue in this case. And, second, if the resolution which was adopted on that date is of materiality, then the entire resolution should be offered and not just a selected portion of it. But I rely principally, your Honor, upon the [291] fact that it is immaterial to any issue here. It is no more important than if counsel brought in a statement that I wrote out

(Testimony of K. J. Middleton.)

in my office or that someone wrote out about this subject saying that they thought such and such should be done. That would have no materiality and no binding force or effect as between the parties to this litigation.

Mr. Gose: May I have Exhibit 22 to illustrate? If the Court please, on November 12, 1942 as shown by Exhibit 22, there was a meeting in San Francisco. And Mr. Middleton at that time was appointed chairman of a committee to see what could be done about working out a solution of this dispute that was pending concerning payment of the tonnage assessment. His committee returned a report, the final paragraph of which was a recommendation to the Coast Board of Trustees "that northern districts members be requested to forward to the Coast Board their recommendation as to above, together with any other recommendation on dividing tonnage charges between dock operators and stevedores where possible." That was on November 12. It in effect asked the Northern members to see what solution they could work out. This resolution was the first meeting of the Washington Board of which I am aware.

The Court: Let me see that exhibit:

Mr. Gose: I am in agreement with counsel that it is not finally binding, but I think——

The Court: I don't know how much importance Exhibit M will have in any decision to be made, but since Exhibit 22 has been admitted, it seems

(Testimony of K. J. Middleton.)

to me that the [292] defendant has a right to have Exhibit admitted.

Mr. Dobrin: Very well, your Honor.

The Court: Exhibit M is admitted. Objection overruled.

(Document previously marked Defendant's Exhibit M for identification was admitted in evidence.)

Mr. Gose: Just a minute. If your Honor please. Counsel has suggested that we might put in the entire resolution instead of,—I thought I had the entire one, but it seems I have only a portion of the one, and I am very happy to withdraw Exhibit M and have the entire resolution marked Exhibit M-1, let us say, and offer it in conjunction with Exhibit M.

The Court: Exhibit M-1. You may mark Exhibit M-1 as the entire resolution.

(Document referred to was marked Defendant's Exhibit M-1 for identification.)

Mr. Gose: And I am also offering Exhibit M-1 in evidence, being the copy of the resolution of November 24, 1942 of which Exhibit M is a part.

Mr. Dobrin: I renew that portion of my objection which would go to Exhibit M-1.

The Court: Exhibit M-1 is admitted. Objection overruled. There might seem to be no reason to allow Exhibit M to remain in evidence, but a part of the testimony would be hard to understand unless we had the brief extract in.

(Testimony of K. J. Middleton.)

(Document previously marked Defendant's Exhibit M-1 for identification was received in evidence.) [293]

(Letter dated December 11, 1942 from K. J. Middleton to R. C. Clapp, F. E. Settersten and H. A. Armstrong was marked Defendant's Exhibit N for identification.)

Q. Mr. Middleton, I am handing you Defendant's Exhibit N for identification, which purports to be an original letter from you to Mr. R. C. Clapp, F. E. Settersten and H. A. Armstrong, written under Date of December 11, 1942 on the letterhead of the Waterfront Employers of Washington. Is that such a duplicate original of such a letter?

Mr. Dobrin: What date is that?

Mr. Gose: December 11, 1942.

A. Yes.

Mr. Goose: I am offering this letter in evidence as another connecting event in what was done immediately after that committee meeting of November 12, 1942 in San Francisco.

Mr. Dobrin: What is that exhibit? N?

Mr. Gose: Yes.

Mr. Dobrin: Again, your Honor. I make the same objection to that letter as I did to the previous exhibits M and M-1. So that my point will be quite clear, the fact that there was activity locally in connection with this subject of tonnage assessment becomes quite immaterial in view of the fact that on May 26, 1943,—that is several months

(Testimony of K. J. Middleton.)

subsequent to the date of this letter, whatever had occurred up to that time was consolidated in a report in a proposal made by the Seattle representatives to the Coast Board and approved; and it seems to me to fill the record up with miscellaneous correspondence and action back of that which is not only useless but it is improper, and I [294] object on the ground that the letter is immaterial.

The Court: If it shall later be determined that the parties entered into a binding contract in May, 1943, of course, what transpired previously could not be allowed to influence the result. However, my recollection is that the plaintiff introduced a number of resolutions and documents dated prior to such alleged contracting date, and I doubt very much the propriety of my allowing some of what transpired before to be introduced as exhibits on one side and denying a request by the other. Objection overruled, and Exhibit N is admitted for what, if anything, it may be worth.

(Document previously marked as Defendant's Exhibit N for identification was received in evidence.)

Mr. Dobrin: May I make a statement in connection with your Honor's remarks?

The Court: You may.

Mr. Dobrin: Your Honor referred to the making of a binding contract in May 1943. I didn't want to give any impression that my remarks were leading to such a conclusion. Possibly your Honor

(Testimony of K. J. Middleton.)

doesn't recall, but the question as to whether or not this method of tonnage assessment should be changed or should not be changed and how it should be changed was a subject of discussion during the period 1942 and 1943, and finally in May of 1943 a final proposal was made by those who were discussing it to the Board, and that is what I had reference to.

The Court: Well, even on that theory, in view of what preceded it having been introduced, I am very hesitant about keeping out some more. I thought counsel was referring [295] to some promise of the defendant through Mr. Hay.

Mr. Dobrin: That came at a different time.

The Court: That was a different date?

Mr. Dobrin: Yes.

The Court: The ruling stands. Objection overruled.

Q. Defendant's Exhibit N, the letter of December 11, 1942 which we had just been discussing, is addressed to Mr. R. C. Clapp, Mr. F. E. Settersten and Mr. H. A. Armstrong. Would you be kind enough to identify each of those men to us? Who is Mr. R. C. Clapp?

A. He is the president of Rothschild Stevedoring Company.

Q. Which is an associate member, I think, of the Coast Association? A. Yes.

Q. And also is a member of the Waterfront Employers of Washington? A. Yes.

Q. Mr. F. E. Settersten, I believe, is president

(Testimony of K. J. Middleton.)

of Griffiths and Sprague Stevedoring Company, the defendant in this case?

A. I understand so.

Q. And an associate member of the Coast Association? A. Yes.

Q. And a member of the Washington Association? A. Yes.

Q. Mr. H. A. Armstrong,—who is he?

A. Western Stevedore Company.

Q. Western Stevedore Company?

The Court: What is he of that?

The Witness: I think he is manager of the company. [296]

Q. That company is a member of the Waterfront Employers of Washington? A. Yes.

Q. And an associate member of the Coast Association? A. Yes.

(Letter dated March 11, 1943 from Griffiths and Sprague by Mr. E. M. Hay to Waterfront Employers Association of the Pacific Coast was marked Defendant's Exhibit O for identification.)

Q. I am showing you, Mr. Middleton, Defendant's Exhibit O for identification and I want to ask you if you recognize what that is?

A. That is the proposed letter that Mr. Hay was to give to the Coast Association.

Q. Well, to orient ourselves, I think I will show you Plaintiff's Exhibit 25, which is already in evidence, a copy of a letter dated March 11, 1943 from Griffiths and Sprague Stevedoring Company by

(Testimony of K. J. Middleton.)

Mr. Hay to the committee of the Waterfront Employers Association of the Pacific Coast. Now, what is the relationship between Defendant's Exhibit O and Plaintiff's Exhibit 25?

A. (Pause.)

Q. Let me ask this——

A. (Interposing) They are the same.

Q. They are the same? A. Apparently.

Q. Let me ask this, is the writing in ink on Defendant's Exhibit O your handwriting?

A. It is.

Q. Did you put that writing in ink on Defendant's Exhibit O [297] as a model for Plaintiff's Exhibit 25 that was ultimately delivered?

A. I did.

Q. You did? A. I did.

Q. There are some pencil notations on Exhibit O. Are those also your handwriting?

A. No.

Q. Do you know whose they are? A. Yes.

Q. Whose are they? A. Mr. Bogle's.

Q. Mr Bogle's? A. Yes.

Q. Does Defendant's Exhibit O with the ink plus the pencil insertions finally express the form of letter that was written by Mr. Hay as Plaintiff's Exhibit 25? A. It does.

Mr. Gose: I am going to offer it in evidence, and I am giving counsel an opportunity to examine it.

Mr. Dobrin: That is objected to. As a part of our case in chief we offered in evidence and

(Testimony of K. J. Middleton.)

there was received in evidence a letter signed by E. M. Hay, Secretary of the defendant company, promising and agreeing to pay the tonnage assessment for which this suit is brought. That was part of our case in chief. Now comes the defendant for his defense and wishes to offer what is apparently a preliminary draft of the same letter. I object to it as immaterial.

Mr. Gose: I am entitled to show whose draftsmanship [298] any document is if there is any problem at all going to the construction of it. I think there are possibly a number of problems involved in the construction of this document. All I am offering it for is to show that it was drafted by the other side, and if there was any problem of construction, to avail myself of the rule that a document is most strictly construed against the draftsman. That is all. There is nothing to be frightened about.

Mr. Dobrin: No, but Mr. Hay is the man who signed it. He is an attorney of this Bar. You are not contending that he could not read what he had written there and what he signed, are you?

Mr. Gose: Not at all. I told you what I am offering it for.

Mr. Dobrin: I still object to it. There is no showing there is anything ambiguous about that letter. It is good plain English so far as I can read. It is a direct promise to pay the very assessment for which this suit is brought.

The Court: I don't think it makes very much

(Testimony of K. J. Middleton.)

difference whether Exhibit O is admitted in evidence or not. The evidence now shows that Exhibit 25, introduced by plaintiff, was written by this witness and modified by Mr. Bogle. I personally can see no difference whether I admit it or do not under the statement of counsel, under Mr. Gose's statement. What difference does it make if I admit it or not?

Mr. Gose: It permits me to avail myself of any argument as to construction, depending who drafted it. [299]

The Court: I say that is already in evidence. This witness admits he wrote it. That Exhibit 25 is what he wrote except as what he wrote was modified by what Mr. Bogle pencilled.

Mr. Dobrin: If your Honor please, maybe that is where the witness' testimony at the moment leads, although I don't care because it is my understanding that,—well, I probably shouldn't say what my understanding is.

The Court: Exhibit O is admitted. If there is going to be any controversy about what was done, it will be admitted in evidence.

Mr. Dobrin: Yes.

(Document previously marked as Defendant's Exhibit O for identification was received in evidence.)

Q. The Lawrence Bogle referred to in your testimony is a member of the firm of Bogle, Bogle & Gates, attorneys for the Coast Association?

(Testimony of K. J. Middleton.)

A. Yes, but Mr. Bogle was there as a trustee or director of the Coast Association.

Q. Of the Coast Association. He was also at that time acting as its attorney, was he not?

A. His firm; not himself.

Q. His firm? A. (No response.)

(Bulletins numbered 1200, 1201, 1202, 1203, 1204 and 1205 were marked Defendant's Exhibits P, Q, R, S, T and U for identification.)

Q. Mr. Middleton, does the Waterfront Employers of Washington act to some extent as a collector of this so-called tonnage tax for the Coast Association? [300]

A. In part.

Q. In part. In other words, some people paying that tax pay it to the Washington Association which in turn remits it to the Coast Association?

A. And some pay direct. The Washington Association merely acts as an intermediary and sometimes that is done for the convenience of the payers.

Q. Of the payers. I am handing you here, one, two, three, four, five, six separate documents marked Defendant's Exhibits P, Q, R, S, T and U, and they purport on their face to be respectively circulars 1200, 1201, 1202, 1203, 1204 and 1205.

The Court: 1200?

Mr. Gose: 1200 to 1205, inclusive.

Q. And they purport to have been issued by the Waterfront Employers of Washington and directed to the members of that organization. To be more

(Testimony of K. J. Middleton.)

precise, they purport to be issued by the Waterfront Employers of Seattle, predecessor of the Waterfront Employers of Washington. Are you familiar with those circulars?

A. No, I was not. I may have seen them in connection with Dodwell & Company's business, but that was before I had anything to do with—

Q. You have never had access to the files or seen them or known of them?

A. I assume they were in existence, but I have never examined them.

Q. You don't know whether they were authentic copies? A. No.

Mr. Gose: Counsel, are you disposed to question [301] the authenticity of them?

Mr. Dobrin: I never heard of them.

Mr. Gose: I will hold this for the time being and later identify them by one of my other witnesses.

Q. Now, Mr. Middleton, you were here when Mr. Boyd testified this afternoon, were you not?

A. Yes.

Q. I believe he testified among other things that the Ames Terminal was a member of the Coast Association. Are you familiar with that organization? A. Very slightly.

Q. Do you know what line of business it is engaged in here?

A. I understand they are acting as a terminal.

Q. Do you know if they hire longshoremen out of the hiring hall? A. I think so.

(Testimony of K. J. Middleton.)

Mr. Dobrin: Just a minute. I object to counsel leading the witness or guessing what this Ames Terminal does or what he thinks. If he knows, I have no objection.

The Court: Do you wish to strike his answer?

Mr. Dobrin: I move to strike his answer and object to both answers, the other one in which he says he thinks, and I forget what other expression he used.

Mr. Gose: After all, he is the president of the Association and has been in the shipping business for years.

Mr. Dobrin: He is your witness, and you should not lead him.

The Court: Motion to strike granted.

Q. Well, do you wish to indicate that you don't know what [302] line of business Ames Terminal is engaged in?

A. I told you I thought they were in the terminal business.

Q. I don't understand you.

A. I told you I thought they were in the terminal business.

Q. Do you know?

A. What is knowledge?

Q. Have you been there and seen what kind of business they are engaged in out there?

A. I haven't been myself personally.

Q. You have never been there? A. No.

Q. How about Western Stevedore Company?

(Testimony of K. J. Middleton.)

Do you know what line of business they are engaged in?

A. They are in the stevedore business.

Q. Do you know that?

A. I know that because they pay tonnage assessments.

Q. Do you know whether they sometimes do dock work with longshoremen obtained out of the hiring hall in Seattle on cargo that does not go aboard a vessel?

A. They do.

Q. When they do such work are they expected to pay any tonnage tax on account of it?

Mr. Dobrin: Just a minute, if the Court please. I object to that in the first place as a leading question to the witness and in the second place as being immaterial, as it has already been testified in this case, and this is part of their defense, to which the plaintiff agrees, that unless you load or discharge cargo, you don't pay a tonnage assessment. So I don't see any necessity of repetition. [303]

Mr. Gose: With that square concession in the record, I will not press the question.

Mr. Dobrin: It has been in here all through.

The Court: The question is withdrawn,

Q. Do you know what line of business Salmon Terminals is engaged in?

Mr. Dobrin: Mr. Reporter, please read my statement.

(Mr. Dobrin's statement read.)

A. Yes, they handle cases of canned salmon and recondition it if necessary.

(Testimony of K. J. Middleton.)

Q. Do they employ longshoremen from the local hiring hall for dock work as distinguished from loading cargo in and out of vessels?

A. Partly. Partly they engage whatever help they can get from any source.

Q. Do you know what line of business Rothschild-International Stevedoring Company is engaged in? A. That is stevedoring.

Q. Stevedores. Do you know whether they from time to time employ longshoremen out of the Seattle hiring hall for the purpose of doing dock work as distinguished from loading cargo in or out of vessels? A. They have done so.

Q. I am showing you Plaintiff's Exhibit 22, which is a copy of the resolution adopted by the Board of the Coast Association on November 12, 1942. There is incorporated as part of that resolution the minutes of a special committee meeting. In the first numbered paragraph of the report of that committee meeting there are the names of [304] various companies. I would like to ask you, the first name is Matson. To what company does that refer?

A. Matson Navigation Company.

Q. That is a steamship company, is it not?

A. It is.

Q. And a voting member of the plaintiff Association? A. Yes.

Q. The next name is Pope & Talbot.

Mr. Dobrin: Just a minute. I would like to ask a question. Do you know what Matson is,

(Testimony of K. J. Middleton.)

whether it is a steamship company or stevedore company, or are you just theorizing about it?

The Witness: The Matson Navigation Company is a steamship company. It also does its own stevedoring. I wasn't asked that question.

Q. I am essentially interested in whether it is in the steamship business and as such is eligible to be a voting member in the plaintiff Association. Pope & Talbot, are they engaged in the steamship business?

A. Under the name of McCormick Steamship Company.

Q. Through the McCormick Steamship Company. Who does Speer refer to?

A. A terminal operator in Portland.

Q. Luckenbach, to whom does that refer?

A. That is the Luckenbach Steamship Company. They also do their own stevedoring.

Q. They are also a voting member of the Plaintiff Association? A. Yes.

Q. Associated, to whom does that refer?

A. That is a terminal association in Los Angeles. [305]

Q. Rothschild, I believe is Rothschild Stevedore? A. Stevedore.

Q. Olympic, to whom does that refer?

Mr. Dobrin: Would you mind, if he makes an error while we are running through, to pick it up at the time instead of waiting until later?

Mr. Gose: Not at all.

Q. Who is Associated?

(Testimony of K. J. Middleton.)

A. I don't know its exact name. I think it is Associated Banning.

Q. What is it? In what kind of operation?

A. Stevedoring.

Q. All right. Olympic, who does that refer to?

A. Stevedoring.

Q. And Griffiths and Sprague is the defendant in this case, is that correct?

A. Stevedoring.

Q. Portland is stevedoring; and it says here "Pay through Moore-McCormick Company."

A. That is Pope & Talbot.

Q. That is Pope & Talbot? A. Yes.

Q. A steamship company? A. Yes.

Mr. Dobrin: Mr. Middleton, has Moore-McCormick anything to do with Pope & Talbot?

The Witness: I understand it is a subsidiary of Pope & Talbot.

Mr. Dobrin: Aren't you thinking of McCormick Steamship? [306]

The Witness: Pardon me, yes. Mr. Gose, I was wrong on Moore-McCormick. That is wrong. I was thinking of the McCormick Steamship Company. That is a different concern.

Q. Now, to get back to the Waterfront Employers of Washington, of which you are president, the members of that Association pay, I believe, on a payroll basis, do they?

Mr. Dobrin: Objected to as leading.

Mr. Gose: He is an adverse witness.

Mr. Dobrin: He is not adverse.

(Testimony of K. J. Middleton.)

Mr. Gose: He is vice-president of the plaintiff corporation.

Mr. Dobrin: He has not shown he is adverse to you in any way.

The Court: I think that until questions put in the ordinary way get no results, that you should follow the regular practice. Objection sustained.

Q. What, if anything, in the nature of dues do the members of the Washington Association pay for the support of that organization?

A. To the Washington Association?

Q. Yes.

Mr. Dobrin: Objected to as immaterial to any defense to this action. We are suing for a tonnage assessment due the Coast Association. Suppose they paid dues to the Elks Lodge, what has that got to do with it?

The Court: Objection overruled.

Mr. Gose: You may answer the question.

(Question read.)

A. They pay 1% of their payroll to cover the costs of collective [307] reporting and central pay office service, which is purely a local operation and has no relation to the Coast operation.

Q. That is 1% of their payroll?

A. Yes.

Q. You mean their payroll to longshoremen? Is that what you mean?

A. The payroll which they send in to the Association.

The Court: We will suspend for ten minutes.

(Testimony of K. J. Middleton.)

(Recess.)

Q. Does any part of that 1% payroll money or does any other money collected by the Washington Association go in any way to relieve any member of the Coast Association from any part of the burden of the 2½c tonnage tax by the Coast Association? A. It does not.

Mr. Gose: You may inquire.

Cross Examination

By Mr. Dobrin:

Q. Mr. Middleton, what was the occasion for your drafting or having anything to do with the document which is in evidence as Defendant's Exhibit O?

A. It was a meeting of the trustees of Washington and a committee from San Francisco at which Mr. Hay was present. He made a statement that they would pay the tonnage assessments up to the end of January of 1943. He came into my office later——

Q. (Interposing) Was that limited to paying them to the end of January, 1943?

A. No. Thereafter they would pay the tonnage assessment as [308] assessed by the Coast Association. He came into my office to discuss this matter afterwards, and I suggested we would like a letter to that effect, and this was the draft of the letter that we were to receive.

Q. Who was present while that draft was being made?

(Testimony of K. J. Middleton.)

A. Mr. Bogle, and in the early part of the meeting Mr. Settersten.

Q. And after the letter was drafted did you discuss it with anyone representing the defendant for the purpose of having them prepare such a letter?

A. I told Mr. Hay this was the letter we would accept.

Q. And where was Mr. Hay when you told him this? A. In my office.

Q. Prior to that had Mr. Settersten suggested some different offer that they would make?

A. Mr. Setterstein came in and said, "We will pay," and then he mentioned a specific amount. I am not clear in my memory what it was. I think it was in the neighborhood of \$20,000. And I said they were required to pay the tonnage assessments on the actual tonnage handled, the tonnage to be determined.

Q. When Mr. Hay was present,—did he come in after you had drafted this document represented by Exhibit O?

A. No, he was present at the time.

Q. Oh, he was present while it was being drawn?

A. Yes.

Q. In the room? A. Yes.

Q. With you and Mr. Bogle?

A. Yes. [309]

Q. And after it was drawn did you hand it to him?

A. Yes, and Mr. Hay said he would sign it as attorney, and I said that the Association would

(Testimony of K. J. Middleton.)

not accept it, and Mr. Hay said, "Well, I am secretary of the company." I said, "Very good. That is perfectly satisfactory to us if signed as secretary of the company."

Q. What happened to this document marked Exhibit O after the conversation?

A. This is the first time I have seen it since then.

Q. Who took it away?

A. Mr. Hay took it away.

Q. And then did you receive the original of which Exhibit 25 is a copy? A. Yes.

Q. And on whose letterhead was that written?

A. On Griffiths and Sprague's.

Q. And signed by Mr. Hay?

A. Signed by Mr. Hay as secretary.

Q. Was that delivered to you or how did it reach you, do you recall?

A. I don't recall how it came to my office.

Q. Do you recall whether it was delivered to you personally or mailed to you?

A. No.

Q. This meeting that you spoke about occurred on March 10, 1943, did it not? A. Yes.

Q. You received a letter back signed by Mr. Hay the next day, is that correct?

A. I don't remember the date. [310]

Q. You don't remember the date. Well, if the letter shows it is March 11, would it refresh your recollection?

A. If it is an exact copy, yes.

(Testimony of K. J. Middleton.)

Q. Now, referring, Mr. Middleton, to the Western Stevedore Company which has been mentioned here, do they load and discharge cargo in the Puget Sound area? A. Yes.

Q. Do they pay the tonnage assessment to the Coast Association? A. Yes.

Q. Does the Rothschild Stevedoring Company load and discharge cargo in the Puget Sound area? A. Yes.

Q. Do they pay their tonnage assessment to the Coast Association? A. Yes.

Q. I show you Exhibit 22, which is minutes of meeting of special committee as shown on that exhibit, and I call your attention to the names under numbered paragraph 1 of that exhibit, the first name being Matson. What Matson does that refer to, do you know?

A. Matson Navigation Company.

Q. Are you sure that was not Matson Terminals? A. I am not sure.

Q. So you don't know whether it was Matson Terminals or Matson Navigation Company?

A. I think the same man represents both companies.

Q. Is that company engaged in stevedoring business?

A. It does its own stevedoring.

Q. So it is engaged in stevedoring?

A. Yes. [311]

Q. And was at the time of this meeting in November 1942? A. Yes.

(Testimony of K. J. Middleton.)

Q. Pope & Talbot is the next name that appears on the list, and does Pope & Talbot do its own stevedoring?

A. Well, it is the McCormick Steamship Company, a division of Pope & Talbot; yes, it does its own stevedoring.

Q. In other words, Pope & Talbot is just a name,—McCormick Steamship Company, Division of Pope & Talbot, is just a name, I should say, and it does its own stevedoring? A. Yes.

Q. And did it in November of 1942?

A. Yes.

Q. And the next matter I want to call your attention to, the next name is Speer. Is that a Portland concern?

A. Yes, he operated a terminal at Portland.

Q. Now, the next is Luckenbach Steamship—it is called Luckenbach here. Is that the Luckenbach Steamship Company? A. Yes.

Q. Is that a steamship company? A. Yes.

Q. Does it do its own stevedoring?

A. Yes.

Q. Did it do so on December 12, 1942?

A. It did.

Q. The next is Associated, and I think you testimony was that it is Associated Banning of San Francisco and San Pedro.

A. I said San Pedro, but they also operate in San Francisco.

Q. And is that a stevedoring concern? [312]

A. Yes.

Q. And was it in November 1942?

(Testimony of K. J. Middleton.)

A. Yes.

Q. The first name in the second column is Rothschild. That is a stevedoring company on Puget Sound, is it not?

A. Yes.

Q. And Olympic is a stevedoring company on Puget Sound, is it not?

A. Yes.

Q. And W. J. Jones is a stevedoring company in Portland, is it not?

A. Yes.

Q. And Rothschild, Olympic and W. J. Jones were such stevedoring companies in November, 1942, is that correct?

A. Yes.

Q. Griffiths and Sprague is the next name. They are stevedores and were in November 1942?

A. Yes.

Q. Who is referred to as Portland, that last name?

A. Portland Stevedoring Company in Portland.

Q. Is that a stevedoring company in Portland?

A. Yes.

Q. Were they a stevedoring company in November 1942?

A. Yes.

Q. Now, with reference to these companies that may act as general agents for War Shipping Administration and whom you testified do their own stevedoring, do they do the stevedoring for War Shipping Administration vessels for which they act as general agents?

A. I don't know. [313]

Q. You don't know. Now, do all of those concerns whose names I have read off on this Exhibit 22 who load and discharge cargo for the United States Navy, United States War Shipping Admini-

(Testimony of K. J. Middleton.)

istration and the United States Army except Griffiths and Sprague pay their tonnage assessment to the Coast Association? A. Yes.

Mr. Dobrin: That is all.

Mr. Gose: That is all.

(Witness excused.)

F. E. SETTERSTEN

being first duly sworn, testified on oath in behalf of the Defendant as follows:

Direct Examination

By Mr. Gose:

Q. Will you state your name, please?

A. F. E. Settersten.

Q. Where do you live, Mr. Settersten?

A. Seattle.

Q. And what is your occupation?

A. President of Griffiths and Sprague Stevedoring Company.

Q. What business is Griffiths and Sprague Stevedoring Company engaged in?

A. In the stevedoring business.

Q. It is not the steamship business.

A. No, sir.

Q. Has it ever been? A. No, sir.

Q. Does it ever expect to be in the reasonably near future [314] that you know of?

A. No, sir.

(Testimony of F. E. Settersten.)

Q. How long have you been connected with this company, Mr. Settersten?

A. Since about 1937.

Q. Since June 1937. Directing your attention to the period from that time to the present, has the defendant Griffiths and Sprague Stevedoring Company performed stevedore service consisting of loading or unloading vessels owned or operated by steamship companies who are members of the plaintiff corporation? A. They have.

Q. During that period has the defendant ever reported any tonnage so handled for any such member company to the plaintiff Association?

A. We have not.

Q. Has it ever been suggested to your knowledge that the defendant should have made such a report with respect to such a cargo?

A. No, sir.

Q. During the period with respect to that cargo has the defendant company ever paid any tonnage tax on cargo loaded or unloaded for member steamship companies? A. They have not.

Q. Has it ever been suggested to your knowledge that they were obligated to make payments on that account? A. No, sir.

Q. What was your understanding as to who should pay the tonnage tax on cargo that the defendant company handled for member steamship companies? [315]

Mr. Dobrin: Objected to as immaterial.

(Testimony of F. E. Settersten.)

Mr. Gose: Mr. Foisie testified his understanding in considerable detail on that subject.

Mr. Dobrin: I don't agree with you that he has.

The Court: Is there a disagreement on that?

Mr. Gose: There is a disagreement on that subject.

The Court: Did he testify as to that?

Mr. Dobrin: He testified as to what the records of resolutions of the plaintiff Association provided for.

The Court: Did he testify to nothing except resolutions?

Mr. Dobrin: That is my recollection with reference to that, your Honor.

Mr. Gose: It is my recollection he testified repeatedly as to what the construction of those resolutions was. The resolutions don't say in so many words; they say a tax of so much per ton. They don't say what class of members pay it.

(Court refers to transcript of testimony given at previous hearing.)

Mr. Dobrin: I want to make the further objection that it appears from the record in this case that the only tonnage assessment that the defendant has failed to pay is tonnage assessment for cargo handled for the United States Army, and the resolutions of the plaintiff corporation require the payment of the tonnage assessment on such cargo specifically. So, to me, the question is—

Mr. Gose: (Interposing) Counsel knows very well— [316]

(Testimony of F. E. Settersten.)

The Court: (Interposing) Just a minute. I have reserved ruling. In due course I will be better able to rule. You may proceed.

Mr. Settersten, I am going to show you Defendant's Exhibits P, Q, R, S, T and U, inclusive, and I want to ask you if you know what those are.

A. Well, they all seem to bear on circulars from the Waterfront Employers of Seattle by Mr. Dawson in regard to the tariff on cargoes inbound and outbound, also payroll assessments.

Q. Do you know where they came from?

A. From our files.

Q. Where did you receive them?

A. From the Waterfront Employers of Seattle at that time, I believe.

Q. Now, let's take them singly. Defendant's Exhibit P bears date of December 3, 1937?

A. Yes.

Q. Do you know whether the defendant company received that on or about that date?

A. Yes, shortly after that date we received it, being a member of the Waterfront Employers of Seattle.

Q. Defendant's Exhibit Q bears date June 18, 1938. Do you know whether you received that on or about that date?

A. Yes, the same as the other.

Q. Defendant's Exhibit R bears date July 29, 1939.

A. July 27.

Q. July 27, 1939. Do you recall whether you received that on or about that date?

(Testimony of F. E. Settersten.)

A. Shortly after that date we received it. [317]

Q. Defendant's Exhibit S bears date February 26, 1940. Do you know whether you received that on or about that date? February 26, 1940?

A. That is right.

Q. Defendant's Exhibit T bears date October 1, 1940. Do you know whether you received that on or about that date?

A. That is right; we did.

Q. And Defendant's Exhibit U bears date January 7, 1941. Do you know whether you received that on or about that date? A. That is right.

Mr. Gose: I offer each and all of these exhibits, Defendant's Exhibits P, Q, R, S, T and U, in evidence for one purpose only, to show that in every instance there is a statement that stevedores are not required to report tonnage of member lines; that members in every instance—I am not interested in the other material, although it will do no harm.

Mr. Dobrin: We object to the offer of Defendant's Exhibits P, Q, R, S, T, and U and each of them for the reason that these, as they show on their face, are circulars sent out by one W. C. Dawson, Treasurer of the Waterfront Employers of Seattle, the predecessor of the Waterfront Employers of Washington, and the same W. C. Dawson is treasurer of the Waterfront Employers of Washington. Whatever statement Mr. Dawson may make as to what stevedores are required to do is in no way binding upon this plaintiff Association.

(Testimony of F. E. Settersten.)

Mr. Gose: With regard to that objection, it is in evidence by Mr. Middleton, who just testified, that the [318] Washington Association acted as the collecting agent for the Coast Association for the purpose of collecting this 2½¢ tonnage tax. Certainly the statement of the collecting agent with regard to the obligations of these stevedore operators is binding upon its principal, the plaintiff Association.

Mr. Dobrin: And I want to add this further objection, why go back into ancient history? In this case there has been introduced in evidence resolutions of the Board of the plaintiff, the last one in 1942, levying the very assessment for which this suit is brought, and I don't see why we should go back to 1937 to find out what a Mr. Dawson, then treasurer of another association, said. I don't see how it has any bearing on the issues in this case.

Mr. Gose: If the Court please, counsel apparently has not read the brief. I would like to answer that last statement if your Honor cares to examine the exhibit first.

Mr. Dobrin: I don't know what brief you refer to, but I have read every one handed to me.

Mr. Gose: One of the defenses raised in this case by an affirmative defense and one of the subjects argued in the brief is that this plaintiff corporation is without constitutional power to tax an associate member. Our point is that if there is any ambiguity in the Constitution and by-laws on that subject, the practice resolves the question.

(Testimony of F. E. Settersten.)

Those exhibits and also the previous one on which there is a reservation of ruling establish the proposition that, from our standpoint there was a practical [319] construction that the only persons who should pay for the support of this organization were the voting members. What I am trying to show by the question on which your Honor reserved ruling and these exhibits is that for years these stevedores were advised by the collecting agent that they were under no duty to report the tonnage handled for member steamship companies because those companies reported their own. It is the steamship company who pays.

There is another one about non-member companies, but that was a special resolution of May 8, 1940, and that was predicated on the consent of the stevedores. They had to sign a formal agreement on that occasion. This ties in very definitely with the affirmative defense that this class of member is not taxable at all under the Constitution and by-laws of this Association.

Now, I may say this further, if the point is not well taken, when your Honor makes his decision the evidence will not have any bearing one way or the other. But we will get along a lot faster if I may introduce these things which under our theory of the case are admissible, and we can argue about their validity later on.

Mr. Dobrin: If the Court please, as I understand it, there is no issue involved here as to our suing this defendant for cargo loaded and dis-

(Testimony of F. E. Settersten.)

charged for a member. At least, I don't understand that you are making any such issue.

Mr. Gose: I say the history bears on the construction.

Mr. Dobrin: I say it is immaterial. [320]

The Court: Counsel says that the only reason he wishes to offer this is for the purpose of showing that each of these exhibits for identification P to U, inclusive, contains the statement that the stevedores are not required to report tonnage of member lines. As to the question put to this witness concerning which I reserved the ruling, reference to the testimony of Mr. Foisie shows that his testimony was quite general. He started early; he covered much territory. Objection overruled, and the witness may answer.

(Question read as follows: "What was your understanding as to who should pay the tonnage tax on cargo that the defendant company handled for member steamship companies?")

A. The agent or the steamship owner.

Q. By the way, did you ever act as agent for a steamship company? A. No, sir.

The Court: I will say as to Exhibits P to U, inclusive, at the present time, at least, I am going to reject Exhibits P to U, insclusive.

Mr. Gose: Then, if the Court please, may I offer in evidence only that single sentence of those exhibits to which I alluded previously, that the stevedores are not obligated to report the tonnage for

(Testimony of F. E. Settersten.)

member steamship companies, only that single sentence which appears in each exhibit?

Mr. Dobrin: I renew my objection.

The Court: Exhibits P, Q and R as limited to a specific sentence are again rejected. The single sentence [321] in Exhibits S, T and U; well, I don't think I am permitted to admit them in evidence. The first three are rejected because they are of the Waterfront Employers of Seattle. The only basis for admitting them would be the testimony of Mr. Middleton that the Waterfront Employers of Washington acted as agent in collections on occasions as accommodation sometimes for the payers; but even Exhibits S, T and U, which purport to be by the Waterfront Employers of Washington, were prior to the time he has acknowledged any knowledge. Exhibits S, T and U as to the single sentence are rejected.

Mr. Gose: I will endeavor to qualify those later on. I may say in connection with that offer, for the Court's information, I would like to call attention—going back to the origin of the Coast Association. I call your Honor's attention to Page 118 on the record in this case, where under direct examination counsel asked Mr. Foisie, "Question: From the beginning of the Association up to the present, has it always been the position of the Coast Association that whoever the member may be who loads and discharges the ship, that he is required to pay the tonnage assessment? Answer: Yes." It is that form of testimony running up and down through

(Testimony of F. E. Settersten.)

several subsequent pages on the same subject matter which is the reason I wanted to show from the inception all local stevedores were not so instructed.

Q. Mr. Settersten, there is in evidence Exhibit 10, which includes among other things a memorandum agreement purporting to be signed by Griffiths and Sprague Stevedoring Company by Mr. Weber and conceded by us to be signed by [322] him.

A. That is right.

Q. Were you familiar, Mr. Settersten, with that memorandum of agreement?

The Court: What date is that?

Mr. Gose: May 9, 1940.

Q. At that date, on May 9, 1940, or thereabouts?

A. That is right. I was familiar with that.

Q. I will state to you, Mr. Settersten, that the words "non-member steamship company" are employed in there. Whom did you understand to be comprehended within that term?

Mr. Dobrin: Objected to as immaterial. For instance, a steamship company is either a member or not a member. I don't see—

Mr. Gose: (Interposing) There is certainly a possible ambiguity as to whether it includes the United States Army, which is the contention of my adversary.

Mr. Dobrin: You don't contend that they are members?

Mr. Gose: I contend that resolution has no bearing, that it relates only to a private non-member

(Testimony of F. E. Settersten.)
company. You are contending in many places that it pertains to the U. S. Army.

The Court: Let us see. Does the plaintiff so contend?

Mr. Dobrin: Oh, yes, anyone who is not a member is a non-member.

Mr. Gose: Is a non-member company.

The Court: Objection overruled. [323]

Q. What do you understand to be the meaning of the words "non-member steamship company" as contained in that exhibit?

A. A ship that might have come in on commercial business and was not a member of the Association. Consequently, it would not pay the dues unless someone had taken care of it.

Q. Did you understand it to be a ship operated by the United States Army? A. No, sir.

Q. Now, the defendant has some contracts now for the loading of Army ships, hasn't it?

A. That is right.

Q. I trust counsel will not object to leading a little bit, he having put his evidence in, Exhibits 37, 38 and 39. Those are the contracts which you had from August, 1942, down to June 30, 1945? The last one expires that date, does it not?

A. That is right.

Q. Those are the contracts involved with the United States Army?

A. Those are the contracts, yes, sir.

Q. By what method did you obtain those contracts? A. On bid.

(Testimony of F. E. Settersten.)

Q. Competitive bids? A. Yes, sir.

Q. And upon what basis is the charge made for the work of loading and unloading vessels?

Mr. Dobrin: Just a minute. I think the contract speaks for itself. [324]

Mr. Gose: I think it does, but I didn't think you would mind if he said on a per ton basis.

Q. It does, doesn't it?

The Court: He is objecting. Objection sustained.

Q. There are some references to extra work in those contracts. Does that extra work comprehend loading and unloading cargo?

Mr. Dobrin: Just a minute. I think if he is going to talk about any detailed contract, he should point to the part that he is talking about so that we can see it.

The Court: I think so.

Mr. Gose: I think it is unnecessary to ask the question. The contract shows what I thought we might, for the convenience of the Court, show orally, but we will take care of that in argument.

Q. Now, Mr. Settersten, there is some evidence here, as I read it anyhow, that if you were not a member of any association, the Coast Association or the Waterfront Employers of Washington, you would be subject to a charge of 4c per man-hour for obtaining men out of the hiring hall.

Mr. Dobrin: Just a minute. I object to counsel making a statement which is not a question——

The Court: (Interposing) I think so.

(Testimony of F. E. Settersten.)

Mr. Gose: If the Court please, counsel himself put in an exhibit—may I have Exhibit 11?

Q. Mr. Settersten, I will show you Plaintiff's Exhibit 11, which reads as follows, "Be It Resolved that effective May 1, 1940, each port association levy against non-members [325] an assessment of 4c per man hour for all longshoremen ordered and dispatched from the hiring hall to perform their work and that all man-hour assessments collected be remitted to the Waterfront Employers Association of the Pacific Coast as a part of the general funds of said Association." Do you know, Mr. Settersten, what the approximate relative cost of paying that form of assessment rather than the 2½c per ton tonnage tax would be to your company? Do you know approximately?

A. Approximately, yes. With a 13-man gang, this would result in 52c, whereas we compute 15 tons per gang hour. At 2½c it would be 37½c.

Q. Do you mean to indicate that if you had to pay the 4c per man hour, you would have to pay about 52c an hour——

A. Yes.

Q. ——as against 37½c under the 2½ tonnage tax?

A. That is right.

Q. I think you said you were with the defendant company back to about 1937.

A. Yes.

Q. How long have you been familiar with this Waterfront Employers of Washington?

A. Oh, since back about 1929 I imagine.

Q. Did it have that association name all the time?

(Testimony of F. E. Settersten.)

A. It was formerly the Waterfront Employers of Seattle, I believe.

Q. What is the relationship of the Waterfront Employers of Washington to the Waterfront Employers of Seattle?

A. I think that was the start of the thing in Seattle, and that was the first name, I take it, and then it was later [326] changed to Waterfront Employers of Washington.

Q. Do you know W. C. Dawson?

A. I do.

Q. Do you know what his position was with the Waterfront Employers of Washington?

A. Treasurer, as I understand it.

Q. Did he previously have a position with the Waterfront Employers of Seattle?

A. Yes, as treasurer.

Q. Do you know whether the Waterfront Employers of Seattle claimed the right to collect this 2½¢ tonnage tax on behalf of the plaintiff Association from 1937 on?

Mr. Dobrin: Just a minute. Objected to as leading.

The Court: Objection sustained.

Q. Do you know whether anyone did pay tonnage tax to the Waterfront Employers Association of Seattle from 1937 on to the plaintiff Association?

A. That I don't know. Some companies paid locally and some in San Francisco, I understand.

Mr. Dobrin: I move to strike the witness' answer as apparently he doesn't know.

(Testimony of F. E. Settersten.)

The Court: Stricken.

Mr. Gose: Very well. You may inquire.

Cross Examination

By Mr. Dobrin:

Q. I just want to see if I get these mathematics. You are using as a basis for your mathematics a 13-man gang? A. That is right.

Q. Just tell me again what you testified to because I didn't follow you.

A. 4c per man hour for a 13-man gang would be 52c. For an average gang hour, 15 tons at $2\frac{1}{2}c$, you have $37\frac{1}{2}c$.

Q. In other words, you figure those 13 men would——

A. Produce 15 tons per gang hour.

Q. Produce 15 tons? A. Yes.

Q. Mr. Settersten, if you considered that Exhibit 10, which bears the signature of Griffiths and Sprague Stevedoring Company, applied only to non-member commercial vessels, why did Griffiths and Sprague Stevedoring immediately in 1940 commence paying the tonnage assessment on cargo loaded and discharged for the United States Army?

A. Well, once we found out that we shouldn't pay it, why, we stopped.

Q. Mr. Settersten, you paid it since the date you signed or almost immediately after you signed that contract, Exhibit 10, right down to and including December of 1942.

A. Jay Weber signed that.

Q. Yes, but you have paid on cargo loaded and

(Testimony of F. E. Settersten.)

discharged for the United States Army and other government agencies from the time of the signing of the agreement, Exhibit 10, down to and including the end of the year 1942?

A. We paid, yes, sir, that is right.

Q. And my question is, if you thought that this agreement, Exhibit 10, didn't apply to you as to Army vessels, why did you commence paying the tonnage assessment on those vessels in 1940?

A. It took a little time to learn about it. [328]

Q. It took all of 1940, 1941 and 1942?

A. I don't believe all of 1942.

Q. At least, it took all of 1940 and 1941 and some part of 1942 to find out about it?

A. Granted.

Q. That is your explanation?

A. Yes, sir.

Q. Where were you looking to find out about this? A. Public policy.

Q. Oh, you were looking for some public policy?

A. Yes, sir.

Q. Well, to tell the truth, Mr. Settersten, isn't this about the size of it, that after you had made a written promise to pay the tonnage assessment, for which this suit is brought, that then for the first time you attempted to find out if there wasn't some way of your getting out of this?

A. Yes, because there was supposed to be some help coming from San Francisco which didn't materialize.

Mr. Dobrin: That is all.

(Witness excused.)

EDWARD M. HAY,

being first duly sworn, testified on behalf of the Defendant as follows:

Direct Examination

By Mr. Gose:

Q. State your name. A. Edward M. Hay.

Q. What is your occupation? [329]

A. Lawyer.

Q. You live in Seattle? A. I do.

Q. And have for a good many years?

A. Yes.

Q. What is your connection with the defendant in this case? A. I am secretary.

Q. Are you also normally acting as its attorney?

A. Yes, I have for quite a number of years.

Q. When did you first become at all familiar with the fact that there might be some controversy between the defendant and the plaintiff concerning this tonnage tax?

A. I think it was in the spring or summer of 1942.

Q. Were you familiar with it in a general sort of way from that time on until March 1943?

A. I think so.

Q. Your name has been used a good deal by the witnesses. You had, did you not, some meetings on March 10 and 11, 1942, with certain representatives of the plaintiff—March 10 and 11, 1943, I mean?

A. Yes.

(Testimony of Edward M. Hay.)

Q. Will you tell us when the first of those meetings took place and what occurred?

Mr. Dobrin: What meeting are you referring to?

Mr. Gose: I will direct his attention specifically.

Q. Directing your attention specifically to the meeting in the morning of March 10, 1943, there was such a meeting, wasn't there?

A. There was. That was a meeting between representatives of Griffiths and Sprague Stevedoring Company and the so-called [330] San Francisco Committee, which had come up to discuss the matter of so-called delinquencies of my client and some of the officers of the local Association, Mr. Middleton and Mr. Bogle.

Q. Will you tell us what transpired at that time?

A. Mr. Middleton, as I recall, opened the meeting with the statement that——

Mr. Dobrin: (Interposing) Just a minute. If the Court please, I want to object to any testimony about anything except with reference to the agreement which Mr. Hay signed. In other words, what discussions went on prior to his signing his name as secretary of this company promising in writing to pay the tonnage assessment that we are suing on is quite immaterial. There is no allegation in this defense that he was defrauded in any manner at all, and what discussion preceded the signing of that agreement is immaterial.

Mr. Gose: If Your Honor please, I have a difficult time with counsel getting him to stay on one goal or the other. In the early stage of this case

(Testimony of Edward M. Hay.)

the first thing we did was to call for a Bill of Particulars asking about this agreement, and he came back with a Bill of Particulars, and Paragraph 3 says that the agreement of the defendant to pay the tonnage tax mentioned in Paragraph 5 of the Complaint was both written and oral and consists in addition of a series of acts out of which defendant's obligation arises. Now, he doesn't claim that there is any written agreement in which everything is concentrated. Under the circumstances I am entitled to show the facts surrounding it. That is all I wanted to [331] do very briefly.

The Court: Objection overruled.

A. Mr. Middleton, as I recall, called this meeting to order. There were present Mr. Settersten and Mr. Weber, and I represented the company. Mr. Bogle was present, and Mr. Middleton in opening it stated that the Committee had come up from San Francisco for the purpose of discussing my client's delinquency in the payment of the tonnage assessment. The Committee, I think principally through Mr. James, one of the members, stated also that they were there to iron out any misunderstandings that there might be between my client and the Association and that they were prepared to offer any help or explanation or assistance that they could to reach an amicable settlement. My client had a number of proposals that it wanted to make to the Committee, and it made the proposals. They were to make various changes of one sort or another, the details of which I don't now recall. The Commit-

(Testimony of Edward M. Hay.)

tee, however, stated that they had no authority whatsoever to bind the Association, that they were there simply to find out if we were going to pay and to help us in any way that they could to get us to pay. I said that I had previously rendered an opinion to my client to the effect I felt there was no legal liability for the payment of the tonnage tax, and I asked if the Committee had any brief or letter from the Association counsel, Mr. Harrison, I think it is, bearing on the subject and they said they had not. I asked Mr. Bogle if he had anything, and he said he did not. He and I then adjourned for a little conference by ourselves to discuss the legal side of it, [332] and my clients, Mr. Settersten and Mr. Weber, went off with the Committee to discuss some practical sides of the issue. Mr. Bogle advanced as an argument why we should pay the fact that our company had been receiving the benefits that the Association gave to its members, that he had discussed the matter with Mr. Harrison and that it was Mr. Harrison's conviction that if we weren't liable for the $2\frac{1}{2}\%$ tonnage tax, at least, we would be liable on a quantum meruit basis. He also argued that this situation that had arisen as a result of the war was a unique one in that the steamship companies had lost their vessels largely—

Mr. Dobrin: (Interposing) Now, if the Court please, I don't want to interrupt again, but I am going to object to this line of testimony.

The Court: I think that the witness has covered

(Testimony of Edward M. Hay.)

more territory than counsel indicated in his question.

Mr. Gose: I asked him to tell what transpired at the morning meeting.

The Court: He has stepped away from the morning meeting, and he is gotten into a private consultation with Mr. Bogle.

Mr. Dobrin: I want to move to strike the testimony in reference to the conversation with Mr. Bogle.

The Court: The testimony with reference to the conversation with Mr. Bogle away from the Committee is stricken.

Q. When did you again have occasion to deal with the Committee, Mr. Hay?

A. I think we got together with the Committee two or three [333] different times that morning. It is a little bit hazy in my mind.

Q. May I ask this, did you come to any conclusions at that morning meeting where you discussed it? A. We did not.

Q. Following the morning of March 10, 1943, when did you again have any occasion to meet with the Committee?

A. The Committee and all those that were present in the morning meeting met again in the afternoon with a number of other people——

Q. (Interposing) Just a moment at that juncture. I will show you Plaintiff's Exhibit 24, which is the minutes of a meeting of the Board of Trustees of the Waterfront Employers of Washington, the

(Testimony of Edward M. Hay.)

body of which Mr. Dobrin says has nothing to do with this case. Is that where you again met the San Francisco Committee?

Mr. Dobrin: Just a minute. I wish to strike the question as containing a statement not addressed to the witness.

The Court: Yes, the whole question is stricken.

Mr. Gose: Very well.

Q. Did you again meet with the Committee from San Francisco at this meeting which is covered by Plaintiffs Exhibit 24? A. Yes, we did.

Q. The minutes described certain matters that occurred there, but I note that it says at one juncture the meeting recessed to allow the San Francisco Committee to meet with Messrs. Griffiths and Sprague. Do you know anything about that? [334]

A. Yes, they did recess, and we did meet.

Q. What happened during the course of that meeting during the recess?

Mr. Dobrin: If the Court please, I am going to renew my objection to matters that preceded the signing by Mr. Hay as secretary of this company of the written promise to pay these assessments because all we are doing is getting into negotiations between himself and this Committee as to what, if anything, they would do, and he finally did something. Now, what preceded that is of no importance except to get us far afield on another wild goose chase.

The Court: Objection overruled.

A. We met, and at this meeting, in addition to

(Testimony of Edward M. Hay.)

the Committee there were present three other stockholders.

Q. Who were they?

A. Mr. Colman, Mr. D. K. McDonald, and Mr. Jim Griffiths; and the whole issue was again re-hashed, principally for the benefit of these stockholders. Thereupon the Griffiths and Sprague group met and discussed the matter privately and then they came back and talked to the Committee and said that we had concluded in view of the argument that had been presented and the war situation that we would renew or resume the payment of the tonnage assessment.

Q. On Army cargo? A. On Army cargo.

Q. What happened then after you told them that?

A. The meeting was then convened again.

Q. Did you go back into the meeting at that time? [335] A. I did.

Q. I note that the minutes state that at 4:00 p.m. the meeting resumed with Messrs. Settersten and Hay present. "Mr. Hay stated after discussion with the Committee his client felt that they had a moral obligation to pay. After some discussion Mr. Hay submitted the following written statement." Will you give us your recollection of how you happened to submit a written statement at that time?

A. I made the oral statement to the meeting at the request of Mr. Middleton. Mr. Ringenberg, the secretary who was taking the minutes, came over to me after I had completed the statement and said

(Testimony of Edward M. Hay.)

he had not been able to get it down and would I please write it out.

Q. And did you then write the statement?

A. And I wrote then what is there contained.

Q. In the minutes of the meeting of March 10, 1943?

A. That is correct.

Q. Very well. The minutes go on to say that the memorandum referred to in the above statement was drafted subsequently in the form of a letter and signed by Mr. Hay as secretary of Griffiths and Sprague Stevedoring Company. It reads—and sets forth the body of the letter which is Plaintiff's Exhibit 25. When, actually, Mr. Hay, was the original document, copy of which is in evidence as Plaintiff's Exhibit 25, signed?

A. It was actually signed on March 11, the following day.

Q. I am showing you Defendant's Exhibit O. That is the document that Mr. Middleton testified he prepared in his handwriting. Do you know when that was prepared? [336]

A. That was prepared on March 11.

Q. Morning or afternoon?

A. Afternoon.

Q. That, of course, was the day following the day of that meeting that you just testified to?

A. That is correct.

Q. Will you tell us what the circumstances were concerning the giving of that letter? What transpired at the time you gave it?

A. I think at the very end of my written statement made at the meeting on the 10th was the

(Testimony of Edward M. Hay.)

statement that the method of payment would be arrived at with the San Francisco Committee. I don't know just how it was arranged, but the following morning I went over to Mr. Middleton's office.

Q. May I interrupt you? Did you meet subsequent to March 10, 1943? Subsequent to the meeting did you meet with that San Francisco Committee again? A. No, we never did.

Q. Was that the statement that you made at that meeting that was not carried out if I understand?

A. That is correct. I went over to Mr. Middleton's office, and he stated that the Committee itself was busy but that he was an officer of the Coast Association and he could conduct the matter with me. Mr. Bogle was present at the time. Mr. Middleton said he thought a good way to resolve this thing was for my client to give a promissory note. I objected to that, and I told him I wouldn't consent to my client's giving a note because I did not want to change its relationship to the Association, its [337] legal relationship. Thereupon he said, "Well, are you not willing to state what your client is going to do?" And I said, "Certainly," and he said, "Are you willing to put it in writing?" And I assured him that I was. He said, "Will you do so?" And I said I would. I thereupon went back to my office and prepared a letter which I brought back to Mr. Middleton on my own letterhead and signed by me, stating what my client would do.

(Testimony of Edward M. Hay.)

That, he said, was not satisfactory, and he then prepared Defendant's Exhibit O which I then took back to my office and prepared on Griffiths and Sprague's stationery, signed it and sent over by messenger to Mr. Middleton's office.

Q. And was the purpose of all that in execution of what you had said in the meeting in the day before? A. That is right.

Mr. Dobrin: Objected to as leading.

Mr. Gose: Pardon me. I was trying to save time.

Q. What was the purpose?

A. The purpose——

Mr. Dobrin: Objected to. It speaks for itself. You don't need to ask the purpose.

Mr. Gose: I am just trying to connect it up as one transaction. I think that is apparently the case, but I see no harm.

The Court: If the letter apparently shows the purpose, I see no reason to overrule the objection.

Mr. Gose: Will you read the question?

The Court: I see no reason why Mr. Dobrin's objection should not be sustained.

Q. Was there any other meeting between the time of the [338] adjournment of the meeting of the Trustees of the Washington Association and this meeting that you had with Mr. Middleton? Any other meeting in which you participated on this subject? A. No.

Mr. Gose: You may inquire.

(Discussion off the record concerning adjournment.)

The Court: Is there any reason we should not adjourn to 9:50 tomorrow morning? The trial of this case is adjourned until ten minutes before 10:00 tomorrow morning.

(Whereupon a recess was had herein to 9:50 a.m., May 18, 1945.) [339]

Seattle, Washington

May 18, 1946; 9:50 a.m.

The Court: You may proceed.

Mr. Dobrin: It will not be necessary for Mr. Hay to take the stand as I have no cross examination of him.

Mr. Gose: The defendant rests, your Honor.

Mr. Dobrin: Mr. Foisie, please take the stand.

F. P. FOISIE

having been previously sworn, was recalled and testified in rebuttal on behalf of Plaintiff as follows:

Direct Examination

By Mr. Dobrin:

Q. Mr. Foisie, pursuant to the resolution which appears as Exhibit F, did you in response to that particular resolution proceed to Seattle and discuss the payment of non-payment of Association assessments with Griffiths and Sprague.

A. I did proceed to Seattle. I didn't have opportunity to discuss it with Griffiths and Sprague on that visit.

(Testimony of F. P. Foisie.)

Q. Did you pursuant to the resolution shown on Exhibit F come to Seattle and discuss the subject with the Army Transport Service authorities?

A. I did, with Colonel Weed.

Q. Do you know approximately when that was?

A. Shortly after the previous visit referred to in the previous exhibit.

Q. That is this Exhibit F? A. Yes.

Q. Sometime shortly after January 12? [340]

A. Yes.

Q. In 1943? A. Yes.

The Court: How long is your examination going to take?

Mr. Dobrin: I wouldn't think it would take 15 minutes.

The Court: I think I will interrupt at this time.

(Recess.)

Q. What was your purpose in seeing Colonel Weed?

A. To advise him fully in the circumstances of our difficulty with our member company doing their work, the Army's work.

Q. At the meeting with Colonel Weed what did you advise him?

A. I told him of the circumstances surrounding the refusal of this member to pay the assessment rate that all other contractors for the Army from the Columbia River south were paying and indicated they would continue to pay.

Q. Did you request Colonel Weed to take any action in respect to Griffiths and Sprague?

(Testimony of F. P. Foisie.)

A. On the contrary—no, perhaps I should say.

Q. Did you advise him in any respect as to the position of the Association in event of continued difficulty with Griffiths and Sprague?

A. Yes.

Q. And what did you advise him concerning that?

A. I told him that no matter what our difficulties with our member companies were or would prove to be, under no circumstances would the Association impede in the slightest degree the war effort, that we would have to [341] have our recourse against the member company in some other way than in any sense impeding the operations.

Q. Will you glance over Exhibit L and familiarize yourself with it?

A. Yes, sir. (Witness does so.)

Q. Pursuant to the resolution shown on Exhibit L, was the study therein referred to made and a report made back to the Board of the plaintiff?

A. No.

Mr. Gose: What was the answer?

The Witness: No.

Mr. Dobrin: That is all. You may inquire.

Mr. Gose: No questions.

(Witness excused.)

Mr. Dobrin: Mr. Middleton, please take the stand.

K. J. MIDDLETON

having been previously sworn; was recalled and testified in rebuttal on behalf of Plaintiff as follows:

Direct Examination

By Mr. Dobrin:

Q. Mr. Middleton, I show you Exhibit N, being a letter of December 11, 1942, written by you to R. C. Clapp, F. E. Settersten and H. A. Armstrong appointing them as a committee, and I wish to ask you this question, did that committee work out a plan and submit the same to the Waterfront Employers of Washington pursuant to their appointment? [342] A. No.

Mr. Dobrin: You may inquire.

Mr. Gose: No questions.

(Witness excused.)

Mr. Dobrin: That is all.

Mr. Gose: Defendant rests too, your Honor.

Mr. Dobrin: That closes our case, your Honor.

The Court: Plaintiff rests and defendant rests.

Mr. Gose: Yes.

The Court: All right. How much time would you like for argument?

(Discussion off the record followed by argument by counsel.) [342]

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11437

GRIFFITHS AND SPRAGUE STEVEDORING
CO. INC.,

Appellant,

vs.

WATERFRONT EMPLOYERS ASSOCIATION
OF THE PACIFIC COAST, a Corporation,
Appellee.

ORDER ELIMINATING EXHIBITS FROM
PRINTED TRANSCRIPT OF RECORD

Good cause therefore appearing, It Is Ordered that the original exhibits in above cause need not be printed in the printed transcript of record herein, but will be considered by the Court in their original form.

WILLIAM DENMAN

United States Circuit Judge.

Dated: San Francisco, Calif., October 11, 1946.

[Endorsed]: Filed Oct. 11, 1946. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD ON
APPEAL

Appellant hereby adopts as its statement of points on which it intends to rely on appeal, its statement of points heretofore filed herein in the District Court, and appearing in the certified transcript of record.

Appellant likewise designates the entire certified transcript of record of proceedings in the District Court as the record for printing and consideration by the Court in this appeal:

/s/ McMICKEN, RUPP &
SCHWEPPE,

/s/ J. GORDON GOSE,

/s/ EDWARD M. HAY,

/s/ DAVID A. HAMLIN,

Attorneys for Appellant.

Copy received Oct. 9, 1946.

BOGLE, BOGLE & GATES

[Endorsed]: Filed Oct. 10, 1946. Paul P. O'Brien,
Clerk.

[Endorsed]: No. 11437. United States Circuit Court of Appeals for the Ninth Circuit. Griffiths and Sprague Stevedoring Company, Incorporated, a corporation, Appellant, vs. Waterfront Employers Association of the Pacific Coast, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed October 2, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.